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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 CR 472 (KPF)

5 NADINE JAZMINE WADE,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.
9 December 5, 2023
8:45 a.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: MATTHEW J. KING

DINA McLEOD

MICAH FERGENSON

18 Assistant United States Attorneys

19 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP

Attorneys for Defendant

20 BY: ROBERT A. SOLOWAY

DAVID M. STERN

21 ALSO PRESENT:

22 JAYDA FOOTE, AUSA Paralegal Specialist

23 MAYERLIN ULERIO, Defense Paralegal

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1 (Trial resumed)

2 THE COURT: Counsel, good morning. I understand from
3 my deputy that the parties wish to speak with me this morning.

4 I have a jury who has been waiting very patiently, and
5 I would like the parties' consent to have my deputy tell them
6 that a legal issue has arisen, that we are addressing it as
7 efficiently as we can, as promptly as we can and we'll get back
8 to them. Because I don't want them annoyed at us on the first
9 day because I made such a big deal about them showing up on
10 time and they did.

11 Is there anyone who objects to having my deputy just
12 give that summary to the jury?

13 MR. STERN: No. We think that's a wise thing to do.

14 MR. KING: That's fine with the government, your
15 Honor.

16 THE COURT: Ms. Noriega, please do that.

17 From whom will I be hearing? Mr. Stern.

18 MR. STERN: Ms. Wade has things she wants to tell the
19 Court. We have advised her in the strongest terms that we can
20 that she should not do that. She insists on doing it.

21 We would like you to hear what she has to say, at
22 least initially, ex parte. Then if you think it should be
23 shared with the government, of course, you can do that.

24 THE COURT: May I have a sense -- or is the answer not
25 until the ex parte -- of the general topic matter. Is it about

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1 this trial, is it about something else?

2 MR. STERN: It is about this trial. And beyond that,
3 I'm not sure I can give you a sense of it. It's Ms. Wade's own
4 thoughts that I don't entirely, I guess I would say,
5 understand.

6 THE COURT: Okay. And do I understand you advised her
7 not to have this conversation with me, and she still wishes to?

8 MR. STERN: Correct. We have advised her not to have
9 this conversation at all, but she thinks it's very important
10 that she have this conversation.

11 THE COURT: With me?

12 MR. STERN: With you, yes.

13 THE COURT: One moment, please.

14 Does the government wish to be heard on this? I'm
15 capable of hearing things, I kind of do it for a living, but I
16 want to hear if you have an objection to this.

17 MR. KING: Can we have one moment, your Honor.

18 THE COURT: Yes, sir.

19 (Conferring)

20 MR. KING: Your Honor, if I may.

21 THE COURT: You may, sir.

22 MR. KING: The government objects to the proposed
23 ex parte nature of Ms. Wade's comments to the Court. The
24 government sees no reason why, and there's been no reason
25 proffered why it should proceed in ex parte fashion.

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1 Defendants often speak directly to the Court even against the
2 wishes of their lawyers, that happens on the record in open
3 court, so the government would object to this happening
4 ex parte.

5 THE COURT: I appreciate that, sir.

6 I think what I'll do is I will hear it in the first
7 instance ex parte. If I determine it was inappropriately made
8 ex parte, I will let you know. I also am conscious of the fact
9 that we should be impaneling this jury and starting this trial.

10 I would like the defense team, including Ms. Wade, in
11 the robing room in just a moment.

12 (Pages 29 through 46 SEALED)

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1 (In open court)

2 THE COURT: To those of you who have been in the
3 courtroom the past few minutes, I appreciate your patience.

4 Let me tell you what I can tell you. And that is that
5 Ms. Wade had several questions for me about this process, and I
6 answered those questions to the best of my ability.

7 There was a request for a copy of the indictment. I
8 gave her my copy of the current indictment.

9 There was a request for information about the
10 participants in the case, which would include you and me and
11 our certifications or authorizations to perform the roles that
12 we perform. I advised Ms. Wade that she can file a FOIA
13 request if she wants, for example, my commissioning certificate
14 or yours. And that's what I'm going to tell you.

15 Those questions have been asked and answered. And I'm
16 advised by her counsel that we are ready to go forward.

17 Counsel, are we ready?

18 MR. SOLOWAY: We are ready.

19 Ms. Wade has asked me to raise the fact that we object
20 to the placement of this particular podium here, which
21 obstructs the view of the jury by Ms. Wade.

22 THE COURT: Ms. Wade is certainly -- if you are
23 comfortable with this -- she can sit on the table that is
24 perpendicular to yours during, for example, questioning of
25 witnesses so she can better see the jury.

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1 MR. SOLOWAY: Thank you.

2 THE COURT: That may impair your ability to consult
3 with her.

4 MR. SOLOWAY: Indeed.

5 THE COURT: But I will let you all figure that out.

6 MR. STERN: Judge, with your permission, I'll sit with
7 here over there.

8 THE COURT: All right. If, for some reason, it
9 doesn't work out, I will let you know. I have no reason to
10 believe it won't.

11 Government has no objection; correct?

12 MR. KING: No, your Honor.

13 THE COURT: Thank you.

14 So friends, it's my intention to impanel this jury and
15 give them the preliminary instructions.

16 Mr. King, is it you who is giving the opening, sir?

17 MR. KING: Yes, it is, your Honor.

18 THE COURT: Are there demonstratives today?

19 MR. KING: Not for the opening.

20 THE COURT: Mr. Soloway, are you opening, sir?

21 MR. SOLOWAY: No, your Honor.

22 THE COURT: I'm sorry.

23 MR. SOLOWAY: I thought you were asking me are there
24 demonstratives.

25 THE COURT: No, sir. I asked the preliminary

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1 question, are you opening.

2 MR. SOLOWAY: I'm sorry, I didn't hear that.

3 THE COURT: I will take the no to the second question
4 I was about to ask you.

5 MR. SOLOWAY: Correct.

6 THE COURT: My deputy is lining up our jurors who
7 arrived on time, which is always a good thing.

8 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Ladies and gentlemen of the jury, thank
3 you very much. I was quite adamant that you be here on time,
4 and I'm glad that you were.

5 Sometimes it happens that legal issues arise during
6 the trial. It was important that this one be resolved before
7 we saw you, before we began, so that is now happening.

8 Ms. Noriega, would you please swear in the jury.

9 (A jury of 12 and 4 alternates was impaneled and
10 sworn)

11 THE COURT: Good morning, everyone. This case is now
12 officially on trial. Just to remind you, this trial is
13 expected to last about eight trials days. It should end at the
14 end of next week. I will mention again, my trial day is a
15 little different from other judges. I think the custom here is
16 to start at 9:30 and end at 5 or 5:30 and have an hour and a
17 half in the middle for lunch. I begin my day a little earlier,
18 at 9, I have a shorter lunch break and shorter breaks in the
19 morning and afternoon. The trade-off is that we end somewhere
20 between 3 and 3:30, that will be governed by where we are with
21 witnesses.

22 If, for example, a witness is about to conclude, we
23 might go over a little bit. If a witness ends and there's five
24 minutes left in the day, I'll send you home. But we will be
25 playing it a little bit by ear, because one can never tell how

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1 long a particular witness will take.

2 I discussed with you yesterday the roles that you and
3 I perform during this trial. In order to do my job -- and this
4 morning is a perfect example of it -- I sometimes have to
5 interrupt the proceedings and talk to the parties about the
6 rules of law that will apply during this trial. We'll
7 sometimes talk here in the courtroom, we'll sometimes talk in
8 your presence, we'll sometimes talk at the sidebar where you
9 won't with able to hear us, we'll sometimes talk in the robing
10 room outside of your hearing. To the extent that these
11 conferences take more than a minute or two, I would excuse you
12 from the courtroom if they were taking place here. I will try
13 to avoid these interruptions as much as I can. But I am going
14 to ask you to be patient as I address them because I need them
15 to ensure the fairness of the trial. I'll also let you know,
16 as a practical matter, they often have the effect of
17 streamlining the trial so the trial proceeds a little more
18 efficiently.

19 Let me talk to you now about the burden of proof here.
20 And the burden is on the prosecution to prove Ms. Wade's guilt
21 beyond a reasonable doubt of each count in the indictment. And
22 I will instruct you on more detail on this issue at the
23 conclusion of the trial. Let me say, for now, that reasonable
24 doubt is defined or can be defined as doubt based upon reason
25 and common sense. It is the doubt that a reasonable person has

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1 after carefully weighing all of the evidence.

2 The burden of proof never shifts to Ms. Wade for the
3 simple reason that the law never imposes on a defendant in a
4 criminal case the burden or duty of calling any witnesses or
5 producing any evidence. The law presumes Ms. Wade to be
6 innocent on all of the charges against her. If, after careful
7 consideration of all of the evidence presented during this
8 trial and following the rules of law that I will explain to you
9 at the conclusion of the trial, you have a reasonable doubt as
10 to Ms. Wade's guilt of a particular charge in the indictment,
11 you must acquit her of that charge. You must find her not
12 guilty. If, however, after careful consideration of the
13 evidence presented during the trial and following the rules of
14 law that I will explain to you at the conclusion of the trial
15 you have no reasonable doubt as to Ms. Wade's guilt of a
16 particular charge, then you must convict her of that charge,
17 you must find her guilty.

18 It is a fundamental principle of law that a defendant
19 has the right not to testify. If Ms. Wade elects not to
20 testify, you may not draw any inference against her based on
21 that decision. And that fact may not enter into your
22 deliberations in any way.

23 I'll explain to you now the order that this trial will
24 proceed in. First, the government and then counsel for
25 Ms. Wade will present their opening statements. An opening

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1 statement is not evidence, it's not argument, it's an outline
2 of what each side believes the evidence presented at trial will
3 show. It is offered to help you follow that evidence as it is
4 presented.

5 You will then hear from witnesses, the testimony of
6 witnesses. The government will call its witnesses. The
7 witnesses will first give direct testimony, and then each
8 witness may be cross-examined by defense counsel. There may be
9 redirect testimony by the government. There may be
10 recross-examination by defense counsel. And there may be,
11 during the witness' testimony, the introduction of exhibits.
12 There may also be stipulations or agreements that are received
13 into evidence.

14 After the government's case, Ms. Wade may, but need
15 not, call witnesses. If she does call witnesses, those
16 witnesses will be examined and cross-examined, just as the
17 government's witnesses were examined and cross-examined. And
18 if she presents evidence, it is possible the government may
19 present evidence in rebuttal.

20 After all of the evidence has been presented, the
21 attorneys for the government and for Ms. Wade will make closing
22 arguments. They may review the evidence in these arguments,
23 they may make arguments to you about what conclusions they
24 think you should or should not draw from the evidence presented
25 at trial. These arguments, just like the opening statements,

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1 are not themselves evidence. You may find them helpful to you
2 in your deliberations.

3 After closing arguments, I will instruct you on the
4 law. Then you will retire to deliberate on your verdict. That
5 verdict must be unanimous, and it must be based solely on the
6 evidence or the look of evidence presented at the trial.

7 What is evidence? Evidence consists of the testimony
8 of witnesses, documents and other items admitted into evidence
9 and stipulations agreed by the parties.

10 There are certain things that are not evidence, that
11 may not be considered by you as evidence, so let me give you a
12 list of what is not evidence. First, statements and questions
13 by lawyers are not evidence, nor are any statements that I
14 make, including ones I'm making right now, or any questions I
15 ask of a witness. The answers to the questions presented to
16 witnesses are what is evidence. And arguments by attorneys,
17 they are not evidence.

18 Second, objections to questions are not evidence.
19 Lawyers have an obligation to their clients to make an
20 objection when they believe that evidence being offered is
21 improper under the rules of evidence. You should not be
22 influenced by any objections or by my rulings on them. If I
23 sustain an objection, then please ignore the question. And to
24 the extent any answer was given, please disregard that answer.
25 If I overrule an objection, then please treat the answer given

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1 to that question as you would any other.

2 If you are instructed that a piece of evidence is
3 received for a limited purpose only, I'll explain to you the
4 purposes for which it can be considered, and I'll ask you and
5 instruct you only to consider it only for those purposes.

6 Third, any testimony that I directed you to disregard
7 or have excluded is not evidence. It may not be considered by
8 you.

9 And fourth, anything you have seen or heard outside
10 the courtroom is not evidence and must be disregarded. As I
11 said yesterday and I will keep saying throughout this trial,
12 you are to decide this case solely on the evidence presented
13 here in the courtroom.

14 As you decide the facts of this case, one of the
15 things you will have to determine is the credibility of the
16 witnesses. When I use that term, credibility, what I mean is
17 how truthful or believable they are. There is no formula to
18 evaluate this evidence. For now, suffice it to say that you
19 bring into this courtroom all of the experience and background
20 of your lives. It is often said -- you may hear the parties
21 say this -- you don't leave the common sense outside the
22 courtroom door. And that's because the same types of tests
23 that you apply in your everyday dealings are the tests that you
24 apply in deciding how much weight, if any, to give to a
25 particular piece of evidence in the case.

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1 The law does not require you to accept all of the
2 evidence admitted at trial. And in determining what evidence
3 you do accept, you must make your own evaluation of the
4 testimony from each of the witnesses and you must make your own
5 evaluation of each exhibit received in evidence. It is
6 essential, however -- and you will see me say this repeatedly
7 to you -- you must keep an open mind until all the evidence is
8 received. And that is because the case may only be presented
9 step by step and witness by witness. You may have had an
10 experience where someone told you a story with a version of
11 events and you found it compelling, but upon hearing another
12 person's version of the same events or upon questioning the
13 original person about their version of the events, things may
14 seem to you very different. There may be another side to every
15 story. And you should use your common sense and your good
16 judgment to evaluate each witness' testimony based on all of
17 the circumstances.

18 I cannot emphasize too strongly, you must keep an open
19 mind until the trial is over. Do not reach any conclusions
20 until you have all of the evidence before you.

21 Do not decide this case based on what we call implicit
22 biases. Everyone -- myself included -- has feelings or
23 assumptions or perceptions, fears, maybe even stereotypes, and
24 there are implicit biases that we may not even be aware of.
25 And these can impact how we see or hear and how we remember

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1 what we see or hear and how we make important decisions. You
2 are making very important decisions in this case. And for this
3 reason, I encourage you strongly to evaluate the evidence and
4 to resist jumping to conclusions based on personal likes or
5 dislikes or generalizations, gut feelings, prejudices,
6 sympathies, stereotypes or biases.

7 Finally, let me caution you about certain rules or
8 principles governing you as jurors in this case. First, you
9 must not talk to each other about this case or with anyone you
10 who has anything to do with this case until the end of the case
11 when you go into the jury room to decide on the verdict. The
12 reason for this requirement is that you must not reach any
13 conclusion on any charge until all of the evidence is in. As I
14 said -- I'll say again -- keep an open mind until you start
15 your deliberations in this case.

16 Second, do not communicate with anyone else about this
17 case or anyone who has anything to do with this case until the
18 trial has ended and you have been discharged as jurors. Anyone
19 else includes members of your family, any friends you may have.
20 And no communicating about the case means no communicating on
21 any social media site. You may tell your family and friends
22 you are a juror on a criminal case, but please do not tell them
23 anything else about the case until you have been discharged by
24 me.

25 Third, do not let anyone talk to you about the case or

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1 anyone who has anything to do with the case. If anyone should
2 attempt to communicate with you about this case at any time
3 throughout the trial, either in or out of the courthouse,
4 immediately report that to my deputy, Ms. Noriega, and to no
5 one else. And by no one else, I mean no one else, including
6 your fellow jurors. To minimize the possibility of any
7 improper communication, I would ask you please to go straight
8 to the jury room when you come to the courthouse in the morning
9 and to remain in the courtroom or the jury room for as much of
10 the trial day as possible.

11 Fourth, do not do any research or any investigation on
12 your own about this case or anyone who has anything to do with
13 the case. Don't go visiting any place involved in the trial,
14 don't read or listen to any news reports about this case, if
15 there are news reports about this case. Do not research the
16 case using the internet or anything else. That's because your
17 decision in this trial must be based solely on the evidence or
18 look of evidence that is presented here in the courtroom. All
19 that you need to know will be presented in open court by the
20 very capable attorneys who represent the parties. And inform
21 me immediately through Ms. Noriega if you become aware of
22 another juror's violation of these instructions.

23 Finally, it appears that each of you have been given a
24 notebook and a pen, that is because I permit jurors to take
25 notes. Please understand that you are not obligated to take

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1 notes. The notes are an aid to your recollection. The court
2 reporters in this case record everything that is said in the
3 courtroom. Any portion of the testimony can be read back to
4 you during your deliberations. If you do take notes, please
5 remember that note taking may distract you from something
6 important that is happening on the witness stand. If you do
7 take notes, make sure you have the correct juror number on the
8 front page of your notebook and make sure that you keep that
9 covered when you are not using it so that only you will be
10 making or seeing the notes that are written in that pad. Let
11 me emphasize, please, that your notes are not to be shared with
12 the other jurors. The fact that a juror has taken notes does
13 not entitle him or her to any greater voice in the
14 deliberations. And a transcript will be available to jurors if
15 there's any difficulty in remembering the testimony. Whatever
16 you do with that notebook, please leave it in the jury room at
17 the end of each trial day, and we'll make sure it's kept
18 secure.

19 From this point to the time that you deliberate, it is
20 your duty not to discuss this case and not to remain in the
21 presence of other persons who may be discussing this case. As
22 I instructed you yesterday, I have instructed the parties and
23 counsel in this case not to have any contact with you. So if
24 you see them in this court complex and they don't acknowledge
25 you, they don't make small talk, if you find yourself in an

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1 elevator with them, please do not take offense. They are not
2 being rude. They are following the instructions that I gave
3 them yesterday.

4 This concludes my preliminary instructions to you.
5 And we begin with the initial stage of the case, which are
6 opening statements. We begin, as I mentioned a moment ago,
7 with the government's opening statement. I'll ask you to
8 please give your attention to the attorneys as they make their
9 opening statements.

10 Mr. King, when you are ready, sir.

11 MR. KING: Thank you.

12 (Continued on next page)

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Opening - Mr. King

1 MR. KING: This is a case about greed and lies. Lies
2 told to the victims of a cruel internet scam who believed that
3 they had met the man of their dreams. Lies told to the banks
4 where those victims were tricked into sending their
5 lifesavings.

6 The defendant, Nadine Wade, is responsible for lying
7 to those banks. She is responsible for receiving and hiding
8 and transferring the money that was stolen from the victims of
9 that internet scam.

10 To pull off a scam like that, it takes a team of
11 criminals. Scammers sitting behind computers in Africa found
12 the victims, convinced the victims to send them money through
13 the defendant and her partners. Here in the United States, the
14 defendant did her part to collect that money and to send it
15 out, all but her cut, on a journey back to the scammers in
16 Africa. She did that by lying and by laundering money.

17 For nearly four years, the defendant engaged in
18 textbook money laundering. She created a fake company and she
19 opened bank accounts in a name of that company. She picked up
20 envelopes full of victim money, she deposited that money in her
21 bank accounts, and she transferred it to other members of her
22 scheme. Victim after victim. FedEx envelope after FedEx
23 envelope. Year after year. Until by the end, the defendant
24 had laundered \$1.5 million worth of money stolen from those
25 victims.

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Opening - Mr. King

1 That is why we're here today, because when the
2 defendant collected and concealed and transferred money stolen
3 from those victims, when she lied to banks about where that
4 money came from, she committed multiple federal crimes: Money
5 laundering, bank fraud, conspiracy.

6 Members of the jury, this is the government's opening
7 statement, an opportunity to preview for you what the evidence
8 will show and how we will prove that the defendant is guilty.

9 So what will the evidence show?

10 You're going to learn that in 2017, people from across
11 the United States started sending money to the defendant. A
12 lot of money. And most of that money went into the bank
13 accounts that the defendant opened in the name of a business
14 that she claimed sold women's clothing and cars. But the
15 people that were sending money to the defendant and her company
16 were not her customers. The defendant didn't have any
17 customers. She had no employees. She had no office. She had
18 no inventory. She didn't even have a website. And that's
19 because her business wasn't real. It was fake. It was a
20 front. It was a front for laundering money stolen from those
21 victims.

22 So why did so many people send so much money to the
23 defendant?

24 Because they were tricked by someone that they met
25 online on a dating website. Someone who turned out to be just

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Opening - Mr. King

1 a scammer. After making the victims fall for them, those
2 scammers convinced the victims to send them money through the
3 defendant and told the victims lies about who the defendant was
4 and where their money was going.

5 The victims, thinking they were helping the people
6 they had met online, flooded the defendant with money mostly by
7 sending her cashier's checks through the mail to a FedEx drop
8 spot at a Walgreens near the defendant's apartment. One woman
9 sent \$50,000 to the defendant, another \$250,000, and another
10 \$480,000 to the defendant.

11 So what was the defendant doing?

12 Almost every week, and sometimes multiple times a
13 week, the defendant went to that Walgreens. She collected
14 FedEx envelopes stuffed with victim money. Sometimes those
15 envelopes had cashier's checks for the defendant. Sometimes
16 they had cash or money orders. And sometimes they had a little
17 bit of everything, cash or money orders or cashier's checks.

18 After collecting the victims' money, the defendant put
19 it in her bank accounts. She transferred it on to other
20 members of the scheme. Eventually it found its way back to the
21 scammers in Africa. But the defendant didn't do that for free.
22 Of course not. She used the victims' money to line her own
23 pockets. She used it at department stores, at restaurants, and
24 to travel. And she withdrew cash, tons and tons of cash.

25 Now, over time, the banks started to get suspicious

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Opening - Mr. King

1 about the activity happening in the defendant's bank accounts.
2 Many of them called the defendant to confront her about what
3 was going on. Some of them even told the defendant that she
4 was under investigation for fraud.

5 Did the defendant stop her activity?

6 Did she tell the truth to the banks?

7 Not even close. She lied again and again to the banks
8 to keep that victim money flowing.

9 In the end, the banks shut down every single bank
10 account the defendant had opened, all 17 of them. Bank after
11 bank. Account after account. Year after year. Until by the
12 end, the defendant couldn't get a bank account open at any
13 bank.

14 That is what the government will prove to you at this
15 trial, that the defendant is guilty beyond a reasonable doubt
16 of laundering victim money and defrauding banks.

17 So how will we prove that the defendant is guilty?

18 You're going to hear from some of the victims
19 themselves. They will tell you how they were tricked into
20 sending money to the defendant and her company by someone they
21 met on a dating website.

22 You'll see some of the victims' communications with
23 the people they met online. You'll see the scammers direct
24 those victims to send money to the defendant and her company.
25 And you'll see photographs of the checks made out to the

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Opening - Mr. King

1 defendant's company and the FedEx labels addressed to the
2 defendant.

3 You'll see bank records for the defendant and her
4 company. In those records you'll see the same thing over and
5 over and over again. The defendant deposits large sums of
6 victim money, and then a few days later, the money is gone.
7 She withdraws it. She transfers it. She spends it. Over and
8 over and over again, for nearly four years, to the tune of
9 \$1.5 million.

10 You'll also hear from the defendant's ex-husband, who
11 is one of her partners in crime and a leader of this money
12 laundering scheme. He will tell you how the scheme worked, how
13 the defendant opened bank accounts, how she picked up envelopes
14 full of victim money, and how she dropped off cash to other
15 members of the scheme.

16 He will tell you how he told the defendant that he had
17 a car business and explained that the money she was gathering
18 was for his customers. He will also tell you that there was no
19 car business, and he will tell you how the defendant had every
20 reason to know that the car business wasn't real. All the red
21 flags: The FedEx envelopes sent to a Walgreens, the
22 consistently closing bank accounts, and the shady cash dropoffs
23 the defendant made to men sitting in cars on the side of the
24 road.

25 Now, make no mistake, the defendant's ex-husband has

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Opening - Mr. King

1 pleaded guilty to federal crimes. He's entered into an
2 agreement with the government to cooperate, to provide
3 information, and to testify, all with the hope of receiving a
4 less sentence. So listen carefully when he testifies, and
5 scrutinize whether it's consistent with the other evidence in
6 the case. When you do that, I expect that you'll find that his
7 testimony is backed up by the other evidence in this case.

8 Finally, you're going to hear some of the calls that
9 the defendant had with her banks. You'll hear the defendant
10 lie to those banks about all the people sending her that money.
11 The victims who the defendant has never seen or spoken to
12 before. The defendant will tell the banks they were her
13 customers.

14 You'll also hear some of the banks tell the defendant
15 that she is under investigation for fraud. You'll even hear
16 one bank employee tell the defendant that one of the people who
17 sent the defendant money, one of those victims, was recalling
18 that money because of fraud. You'll hear that. Even after
19 that call, the defendant continued participating in this scheme
20 for years out of sheer greed. Greed and lies. That is what
21 this case is all about.

22 At the end of the trial, when all the evidence has
23 come in, we will have another opportunity to speak to you and
24 to explain how all of that evidence fits together to prove the
25 defendant is guilty.

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Opening - Mr. King

1 But between now and then, I'm going to ask you to do
2 three things:

3 First, pay close attention to the evidence;

4 Second, follow Judge Failla's instructions on the law;
5 and

6 Third, use your common sense. The same common sense
7 you use every single day.

8 If you do those three things, you will return the only
9 verdict that is consistent with the evidence in this case:

10 That the defendant is guilty.

11 THE COURT: Thank you, sir.

12 Mr. Soloway, when you're ready.

13 MR. SOLOWAY: Thank you, your Honor.

14 Good morning.

15 THE JURY: Good morning.

16 MR. SOLOWAY: As you know, having heard from the
17 government, this case is about a vicious fraudulent scheme
18 which our client, Nadine Wade, is accused of knowingly
19 participating in. It's a case about a criminal crew which
20 preyed upon and fleeced the lonely and vulnerable. It's a crew
21 which didn't reach out to people randomly. Instead, they
22 deliberately targeted, as the government mentioned to you,
23 people on dating sites, to troll like sharks for victims among
24 people whom they knew to be seeking love and companionship or
25 one or the other.

NC5sWAD2

Opening - Mr. King

1 In that space on those dating sites, there were wolves
2 in the henhouse. And who are these predators? They were
3 focused, experienced criminals. The evidence will show you the
4 fruits of their cruelty. It will show you how practiced they
5 are in the art of fraud and deceit. It will show you what they
6 are made of, how they steal money from strangers by pretending
7 to have human feelings for them, and then exploit the human
8 feelings that are sent back to them by stealing from those
9 people they've misled.

10 You'll hear from one of those crooks at this trial.
11 His name is Abuchi Felix. You'll learn from the evidence how
12 he lived and the values, goals, and activities that made up his
13 days. You'll learn of his knowing and intentional
14 participation in the crimes that fleeced many unsuspecting
15 people looking for online companionship, not just of their
16 hard-earned savings, but perhaps, more importantly, of their
17 dignity and their sense of safety in the world.

18 And as the government has told you, you will also hear
19 from some of the victims, and the stories of what happened to
20 them will make you mad and will make you sad and will make you
21 feel sorry for them.

22 You're also going to learn from the evidence that one
23 day, in 2016, the life of the just-turned twenty two years old
24 Nadine Wade intersected with that of Abuchi Felix, when she was
25 introduced to him at a gathering at the home of one of his

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Opening - Mr. King

1 family members.

2 You'll learn they began a relationship and that the
3 two of them were married. The evidence will show that Felix
4 told her he made his living in the car business, that he bought
5 cars at auctions, and sold them overseas. To her, he appeared
6 to be a financially stable person. A hard worker. He was of
7 Nigerian decent and a member of a large close-knit family made
8 up of what seemed, to Nadine Wade, like working people who
9 valued family and children, who spent time together, and seemed
10 to help one another in hard times, and celebrate together when
11 life was good.

12 That picture of family life powerfully appealed to
13 Ms. Wade and represented a kind of life that had been absent
14 from her growing up and during her young adulthood. More
15 important, it represented the kind of life for which she
16 yearned, and Felix quickly became the man she hoped she could
17 join together with to build the life of her dreams.

18 You'll learn, however, that what happened next is not
19 that she lived happily ever after. That is why we're here.
20 What happened next, instead, is that Ms. Wade became one of
21 Mr. Felix's victims. The evidence will show that she was
22 someone who was asked to participate by her husband in his
23 business activities in many ways. She was tasked with bringing
24 payment to auction lots which cars which were successfully
25 purchased at auction were stored. She picked up money at

NC5sWAD2

Opening - Mr. King

1 Western Union and other money transfer stores, which he told
2 her was related to his car business.

3 As time passed, at her husband's request, she opened
4 bank accounts to accept payments which she believed were part
5 of the proceeds of his car business. It turns out that these
6 activities aided and facilitated her husband's crimes. The
7 evidence will show, however, her lack of awareness of her
8 participation in an illegal enterprise and her innocent state
9 of mind as she went about her labors and her life. These are
10 the matters that you will be called upon to consider.

11 As of now, you haven't heard any evidence. I tell you
12 now at the outset of this trial that much of what the
13 government will present and argue to you is true. It's true
14 that Abuchi Felix worked with others to steal a lot of money
15 and that Nadine Wade was married to him and helped him with his
16 business, including doing banking for him.

17 In the coming days, you will hear the evidence and it
18 will be your job to decide whether it proves Nadine Wade's
19 guilt of any, all, or none of the criminal charges lodged
20 against her. We ask you, and the judge has charged you, to
21 keep an open mind until you've heard all of the evidence in
22 this case. When you have heard all of the evidence in this
23 case, you will understand what happened, and you will see that
24 the many things Ms. Wade did, she did without knowledge of the
25 underlying criminal activity that was afoot.

NC5sWAD2

Birch - Direct

1 And after you've heard what there is to hear, we will
2 have the opportunity to return and talk to you again, and will
3 at that time ask you to find our client not guilty of the
4 crimes charged against you.

5 Thank you.

6 THE COURT: And now we begin with the government's
7 case in chief.

8 Please call your first witness.

9 MR. KING: The government calls Joy Birch.

10 THE COURT: Ms. Birch, please come forward. I'll ask
11 you please to raise your right hand.

12 JOY BIRCH,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 Could you please state and spell your full name for
16 the record.

17 THE WITNESS: Joy Birch, J-o-y B-i-r-c-h.

18 THE COURT: All right. Is everyone able to hear
19 Ms. Birch.

20 Thank you.

21 Counsel, you may proceed.

22 MR. KING: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. KING:

25 Q. Good morning, Ms. Birch.

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Birch - Direct

1 A. Good morning.

2 Q. How old are you?

3 A. I'm 67 years old.

4 Q. Where do you live?

5 A. Saint George, Utah.

6 Q. Do you currently work?

7 A. No.

8 Q. Are you married?

9 A. No.

10 Q. Have you been married before?

11 A. Yes.

12 Q. What happened to your prior marriage?

13 A. My first husband was killed in an accident, and my second
14 husband -- I remarried, and that one ended in a divorce.

15 Q. Do you have any children, Ms. Birch?

16 A. Yes.

17 Q. Do you have any grandchildren?

18 A. Yes.

19 Q. Do you recognize the name Diego Francisco?

20 A. Yes.

21 Q. Who is Diego Francisco to you?

22 A. He was someone that reached out to me on an internet --
23 internet dating, um, website.

24 Q. Did you ever meet Diego Francisco in person?

25 A. No.

NC5sWAD2

Birch - Direct

1 Q. At some point during the relationship you had with Diego,
2 did he ask you to send him money?

3 A. Yes.

4 Q. Did you send him money?

5 A. Yes.

6 Q. Overall, about how much money did you send to Diego?

7 A. Around \$160,000.

8 Q. Why did you send him that money?

9 A. Um, I was feeling that -- trying to be kind, feeling that
10 somebody was in need at the beginning. And then it just seemed
11 like things -- there was always problems that came up, and it
12 seemed like I was the only one that would be able to help him.

13 Q. Did he ever pay you back?

14 A. No.

15 Q. Ms. Birch, when you gave this money to Diego, did you send
16 the money directly to him?

17 A. No.

18 Q. Who did you send it to?

19 A. I sent it to different companies, but the first one was
20 Nadine Wade is who I addressed them to.

21 Q. Why did you send money for Diego to Nadine Wade?

22 A. Diego, he told me that he had blown a valve on his
23 construction site and that he needed money in order to get a
24 new valve. The company that he was working with, um, he needed
25 to expedite the money so that that could be, the purchase of

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Birch - Direct

1 the valve, could be made and shipped.

2 Um, and so he told me that Nadine Wade was the person
3 to send it to because she could make sure that it was deposited
4 into the bank account to ensure the shipment and payment of
5 this valve that was supposed to be --

6 Q. Thank you, Ms. Birch.

7 We'll come back to that detail in a few minutes. I
8 want to direct your attention to August 2020.

9 What was your relationship status at that time?

10 A. Single.

11 Q. Around that same time, did you try -- decide to try online
12 dating?

13 A. Yes.

14 Q. Why did you decide to try online dating?

15 A. Because I was lonely. Um, I wanted somebody to talk to,
16 someone to do things with, someone that maybe would think I was
17 pretty. Um, someone that could look out for me.

18 Q. What online dating site did you end up trying, Ms. Birch?

19 A. LDS Singles.

20 Q. Why did you choose that dating site in particular?

21 A. Because I am of the Church of Jesus Latter-Day Saints and
22 they catered to that religion, to try to bring those in the
23 same theology stance together to meet one another.

24 Q. When you were using that dating site, did there come a time
25 that you met Diego Francisco online?

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Birch - Direct

1 A. Yes.

2 Q. How long into your time using the LDS Singles website did
3 you connect with Diego Francisco?

4 A. I was only on their website for, like, a week, maybe two.

5 Q. What, if anything, did Diego tell you about where he lived
6 at that time?

7 A. He said he lived in Salt Lake.

8 Q. Did he ever provide you with any other specific information
9 about where he lived?

10 A. Yes.

11 MR. KING: Ms. Foote, can you please pull up what's
12 been marked for identification as Government Exhibit 501L and
13 show it only to Ms. Birch, the parties, and the court.

14 Q. Ms. Birch, do you recognize this document?

15 A. Yes, I do.

16 Q. And what is it?

17 A. It is the text that Diego sent to me saying that this was
18 his address.

19 Q. Is this true and correct copy of that document that Diego
20 Francisco sent to you?

21 A. Yes.

22 MR. KING: Your Honor, the government offers
23 Government Exhibit 501L.

24 MR. SOLOWAY: No objection.

25 THE COURT: Government Exhibit 501L is admitted into

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Birch - Direct

1 the evidence and it may be published to the jury.

2 (Government's Exhibit GX 501L received in evidence)

3 MR. KING: Ms. Foote, if you can publish it to the
4 jury.

5 Thank you.

6 BY MR. KING:

7 Q. Ms. Birch --

8 THE COURT: One moment, please, sir.

9 OK. Is it possible you can move over, sir, to the
10 monitor two seats over that does work for now. Let's have you
11 sit there and work on getting it fixed.

12 Does that one work, sir?

13 JUROR: Yes.

14 THE COURT: OK. Thank you, sir.

15 JUROR: This one is off as well.

16 THE COURT: OK. Let's ...

17 Thank you, as always, Ms. Noriega.

18 Counsel, you may continue.

19 MR. KING: Thank you, your Honor.

20 BY MR. KING:

21 Q. Ms. Birch, does this document say where Diego -- where you
22 believed Diego lived?

23 A. Yes.

24 Q. And where does it say that he lived?

25 A. He live -- it says that he lived on 44 Broadway, Apartment

NC5sWAD2

Birch - Direct

1 2005, in Salt Lake City, Utah.

2 Q. Did you ever look up that address after you received this?

3 A. Yes.

4 Q. And what was there?

5 A. Apartment building.

6 MR. KING: Ms. Foote, you can put that exhibit aside
7 for now.

8 Q. Ms. Birch, what, if anything, did Diego tell you about his
9 marital status when you met online?

10 A. He said that he had lost his wife a couple of years prior.

11 Q. What, if anything, did Diego tell you about what he did for
12 a living?

13 A. He said that he was an underwater deep sea welder and that
14 he was also a model, and that was the images he used to portray
15 himself online --

16 Q. Did he tell --

17 A. -- from those model photos.

18 Q. I'm sorry, Ms. Birch.

19 Did he tell you any more information about his career
20 as a male model?

21 A. Um, just that he did it kind of on the side and that, I
22 believe it was in Italy, that he was supposedly doing this.

23 Q. How did you communicate with Diego when you first met him?

24 A. Um, we started off on just using the e-mails back and forth
25 through the LDS Singles website.

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Birch - Direct

1 Q. Did the way you communicated change at some point?

2 A. Yes.

3 Q. How did you communicate then after it changed?

4 A. Then we started texting and then we would use phone calls.

5 Q. How often did you communicate with Diego during this
6 period?

7 A. About twice a day.

8 Q. You alluded to this before, but Diego ever send you
9 photographs of himself?

10 A. Yes.

11 Q. What did he look like in those photographs?

12 A. Dreamy. He was handsome. My -- my wildest dreams.

13 MR. KING: Ms. Foote, can you please pull up what's
14 been marked for identification as Government Exhibit 501K, and
15 show it only to Ms. Birch, the parties and the court.

16 Q. Ms. Birch, can you see that?

17 A. I can.

18 Q. Do you recognize that image?

19 A. Yes.

20 Q. What is it?

21 A. It is a copy of a passport that he sent to me.

22 Q. Is this a true and correct copy of that photo of the
23 passport that Diego Francisco sent to you?

24 A. Yes.

25 MR. KING: Your Honor, the government offers

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Birch - Direct

1 Government Exhibit 501K.

2 MR. SOLOWAY: No objection.

3 THE COURT: Government Exhibit 501K is admitted into
4 evidence and it may be published to the jury.

5 (Government's Exhibit GX 501K received in evidence)

6 MR. KING: Ms. Foote, if you can please publish that
7 to the jury.

8 BY MR. KING:

9 Q. When you received this photograph, Ms. Birch, who did you
10 believe was depicted in this passport photograph?

11 A. I believed it was Diego.

12 Q. What is your understanding, if any, of why Diego sent you
13 an image of his passport?

14 A. He was trying to prove to me that he was a good person and
15 that he would not send this type of information. He felt that
16 he couldn't trust me. He was just trying to say that I'm a
17 good person. You can trust me. Here is my information.

18 MR. KING: Ms. Foote, you can put that exhibit aside.

19 Q. Did Diego send you any other photographs of himself?

20 A. Yes.

21 MR. KING: Ms. Foote, if you can please pull up, and
22 just for Ms. Birch, the court, and the parties, and click
23 through these next few exhibits starting with Government
24 Exhibit 501M, and then click to 501N, as in Nancy, 501O, 501P,
25 and 501Q.

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Birch - Direct

1 THE COURT: Mr. Soloway, is there an objection to the
2 introduction of these exhibits?

3 MR. SOLOWAY: No objection.

4 THE COURT: I assume there is a request for admission.

5 MR. KING: Yes, your Honor.

6 The government offers these exhibits into evidence.

7 THE COURT: Thank you.

8 Government Exhibits 501M, N, O, P, and Q are admitted
9 into evidence and they may be shown to the jury.

10 (Government's Exhibits GX 501M, N, O, P, and Q
11 received in evidence)

12 MR. KING: Thank you, your Honor.

13 BY MR. KING:

14 Q. Ms. Birch, let's start with Government Exhibit 501M.

15 MR. KING: If you could publish that to the jury,
16 Ms. Foote.

17 Q. What is this a photograph of?

18 A. Diego with his dog.

19 Q. And who sent -- who, if anyone, sent this photograph to
20 you?

21 A. Diego.

22 Q. I want to turn now to Government Exhibit 501N.

23 What is this a photograph of?

24 A. Diego in his office.

25 Q. And who, if anyone, sent this photograph to you?

NC5sWAD2

Birch - Direct

1 A. Diego.

2 Q. And, finally, I want to show you what's in evidence as
3 Government Exhibit 501Q.

4 What's depicted here, Ms. Birch?

5 A. Diego says that he liked to cook, so he was showing me what
6 he had made.

7 Q. What's your understanding, if any, of why Diego sent these
8 photographs to you?

9 A. Um, just trying to share things that he -- share what he
10 looked like, what he did.

11 MR. KING: Ms. Foote, you can take that exhibit down.

12 Q. Ms. Birch, at some point after you met Diego, did you stop
13 using the LDS Singles website?

14 A. Yes.

15 Q. And why did you stop using the website?

16 A. After a couple of days of meeting with or talking with
17 Diego, he said that he felt that he would really like to get to
18 know me and was not going to have his name on the website
19 anymore.

20 Um, he wanted to try to make it more of an exclusive,
21 um, virtual dating and, um, so he took his down, and eventually
22 I took mine down.

23 Q. At the beginning of your relationship with Diego, what were
24 your conversations with him like?

25 A. They were just the normal let's get to know each other,

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Birch - Direct

1 tell me about your family, tell me about where you lived, grew
2 up.

3 Q. You testified earlier that at times you spoke to him over
4 the phone, is that right?

5 A. Yes.

6 Q. Did you ever call him?

7 A. Yes.

8 Q. And did he pick up when you called him?

9 A. No.

10 Q. So how did you two have conversations over the phone?

11 A. He usually called me. Whenever I would try to call him, he
12 wouldn't pick up, but within a minute, he would call me back.

13 Q. Ms. Birch, did there come a time when you a video call with
14 Diego?

15 A. We tried.

16 Q. Can you describe what happened?

17 A. He said that he was in Florida and so it was sunshine and
18 bright. So he had an umbrella that he held to the side, and
19 then he had some sort of a photo that he had -- I don't know
20 how he had it affixed or anything -- that looked of Diego so
21 that I did see something that looked like Diego.

22 He said -- then he saw my picture and he says, Oh, you
23 look just like what's on the website. And then everything went
24 fuzzy. And he says, I'm outside, so I've lost my connection,
25 so we can't do this FaceTime anymore.

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Birch - Direct

1 Q. Did you have anymore video calls with Diego after that?

2 A. No.

3 Q. Ms. Birch, what were your feelings like towards Diego at
4 the beginning of your relationship with him?

5 A. I was interested. He was saying things that I liked.

6 Q. Did your feelings grow over time?

7 A. Yes.

8 Q. And how would you characterize your feelings towards him
9 when the relationship was good?

10 A. Um, I was very interested. He was telling me all of the
11 right things. Um, he had answers to questions that I would
12 broach. He would send me music that said this is how I feel.
13 It's like what every woman wants to hear, feel, and hope that
14 it was true.

15 Q. Ms. Birch, did there come that time when Diego told you
16 that I was working on an oil rig?

17 A. Yes.

18 Q. What did he tell you about why he was on an oil rig?

19 A. He says that he -- he claimed that he had a company and he
20 had a crew, and they were called to go and do some work on an
21 oil rig that needed some underwater welding.

22 Q. Did you continue to communicate with Diego when he was on
23 the oil rig?

24 A. Yes.

25 Q. How did you communicate with him when he was supposedly on

NC5sWAD2

Birch - Direct

1 the oil rig?

2 A. Texting and phone calls.

3 Q. Did he ever send you any photographs or videos from the oil
4 rig?

5 A. Yes.

6 MR. KING: Ms. Foote, can you please bring up what's
7 already in evidence as Government Exhibit 5010. You can
8 publish it to the jury. Thank you.

9 Q. Ms. Birch, what is this a photograph of?

10 A. Diego with, supposedly, his crew.

11 MR. KING: And, Ms. Foote, if you can please show
12 Ms. Birch and the jury what's already in evidence as Government
13 Exhibit 501P.

14 Q. What's depicted here, Ms. Birch?

15 A. Diego on the oil rig.

16 MR. KING: You can put those aside, Ms. Foote.

17 Thank you.

18 Q. Ms. Birch, did there come a time when Diego told you about
19 something that had happened on the oil rig?

20 A. Yes.

21 Q. What did he tell you happened?

22 A. He actually sent me a video of some sort of a blowup or an
23 explosion on the oil rig because of a valve.

24 Q. Did there come a time after that that he told you or that
25 he asked you for money?

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Birch - Direct

1 A. Yes.

2 Q. What did he tell you about why he needed the money?

3 A. He says that the blowup of the valve was his fault, he was
4 taking responsibility for it, and that he needed to replace
5 that valve.

6 Q. Did he ask you to get him money in a certain way, like, a
7 cash or a check?

8 A. He told me to get a cashier's check.

9 Q. What, if anything, did he tell you to do with that check?

10 A. He told me who to have that check made out to and who to
11 send that to.

12 Q. Did you send that check?

13 A. Yes.

14 Q. Did he ask you for money only once?

15 A. No.

16 Q. Did you send more money after that first check?

17 A. Yes.

18 Q. Did Diego ask you to send money a certain way as well these
19 other times, again, like, cash or a check?

20 A. Yes.

21 Q. How did he ask you to send it?

22 A. He asked me to FedEx it overnight.

23 Q. And was it cash or checks?

24 A. They were checks.

25 Q. What, if any, records did you keep of the money you sent in

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Birch - Direct

1 response to Diego's requests?

2 A. I had took photos of the checks, I took photos of the
3 mailing, um, mailing address on the FedEx, and I took photos of
4 the FedEx receipt.

5 MR. KING: Ms. Foote, if you can please show just the
6 witness, the court, and the parties what's been marked for
7 identification as Government Exhibit 501A, and we're going to
8 flip through a few of these.

9 Start with 501A.

10 Go on to 501B.

11 Government Exhibit 501C.

12 Government Exhibit 501D.

13 Government Exhibit 501E.

14 Government Exhibit 501F.

15 501G.

16 501H.

17 501I.

18 501J.

19 THE COURT: Mr. Soloway, is there an objection to any
20 of these?

21 MR. SOLOWAY: I have no objection, Judge.

22 MR. KING: The government offers those exhibits into
23 evidence, your Honor.

24 THE COURT: Government Exhibits 501A, B, C, D, E, F,
25 G, H, I, and J are admitted into evidence. They may be

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Birch - Direct

1 published to the jury. Thank you.

2 (Government's Exhibits GX 501A, B, C, D, E, F, G, H,
3 I, and J received in evidence)

4 MR. KING: Thank you, your Honor.

5 BY MR. KING:

6 Q. Ms. Birch, have you seen those exhibits that we just
7 clicked through for your testimony today?

8 A. Yes.

9 Q. And what are they?

10 A. They are copies of the checks, mailing labels, and the
11 receipts for payment for FedEx.

12 MR. KING: Ms. Foote, if you can please bring up
13 what's already in evidence as Government Exhibit 501A and
14 publish that to the jury.

15 Q. What is that, Ms. Birch?

16 A. That's the cashier's check that I sent to Royal Treasure
17 Chest.

18 Q. And how much was this check for?

19 A. \$8,500.

20 Q. When did you get this check?

21 Is there a date on it?

22 A. August 6 of 2020.

23 Q. Why did you make this check out to Royal Treasure Chest,
24 LLC?

25 A. That's what Diego told me to do.

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Birch - Direct

1 Q. What, if anything, did Diego tell you about Royal Treasure
2 Chest, LLC?

3 A. That that was a company that would be able to -- that had a
4 valve that would be needed to fix the situation that he was
5 facing.

6 Q. What did you do with this check after you obtained it?

7 A. Then I mailed it to Nadine Wade.

8 MR. KING: Ms. Foote, can you please bring up what's
9 already in evidence as Government Exhibit 501B.

10 Q. What is this, Ms. Birch?

11 A. That's the mailing -- mailing label and the FedEx receipt.

12 Q. Who obtained this FedEx label?

13 A. I did.

14 Q. And when did you use this label for?

15 A. To mail the check previous.

16 Q. And who did you send this check to?

17 A. Nadine Wade, in care of Walgreens.

18 MR. KING: And, Ms. Foote, if you can just zoom in on
19 the label for a moment.

20 Q. What was the address that you used to send this to Nadine
21 Wade?

22 A. It was Walgreens at 244 East 161st Street in the Bronx.

23 Q. Why did you send this check to that Walgreens?

24 A. Um, that's what Diego told me to. I did know that there
25 was some places around that did not have a concierge to accept

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Birch - Direct

1 packages. So Walgreens was a place that would accept packages
2 that they could pick up.

3 THE COURT: Counsel, may I inquire?

4 MR. KING: Yes, ma'am.

5 THE COURT: Thank you.

6 Ms. Birch, you just said that you were aware that some
7 people didn't have concierges who could accept packages.

8 Is that something you just knew from your experience,
9 or was that something that Mr. Francisco told you was the
10 reason why you were sending it to a Walgreens?

11 THE WITNESS: It's from experience because I had a son
12 that lived in New York for a time.

13 THE COURT: Thank you.

14 Thank you, counsel.

15 MR. KING: Thank you, your Honor.

16 Ms. Foote, you can put that aside and bring up what's
17 already in evidence as Government Exhibit 501C and publish that
18 to the jury.

19 Q. What's this, Ms. Birch?

20 A. It's a check I sent to Royal Treasure Chest.

21 Q. And how much was this check for?

22 A. 6,500.

23 Q. And when did you obtain this check?

24 A. On the 11th of August of 2020.

25 Q. And why did you get another check payable to Royal Treasure

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Birch - Direct

1 Chest, LLC?

2 A. Um, I can't remember the exact, that there was another
3 complication. I can't remember what exact complication there
4 was.

5 Q. Did somebody tell you to obtain this check?

6 A. Yes.

7 Q. And who was that?

8 A. Diego.

9 Q. And what did you do with this check after you got it?

10 A. I mailed it.

11 MR. KING: Ms. Foote, can you please bring up what's
12 already in evidence as Government Exhibit 501D.

13 If you could rotate that so that the FedEx label is
14 straight. Is that possible?

15 If not, maybe we can just zoom in on the FedEx label.
16 That's fine.

17 Q. Ms. Birch, what did you use this label for?

18 A. To mail the previous check.

19 Q. And who did you send this check to?

20 A. To Nadine Wade, again, to a Walgreens at 244 East 161st
21 Street.

22 Q. Is that the same Walgreens that we looked at before?

23 A. Yes.

24 Q. Again, why did you send this check to that Walgreens?

25 A. Because that's what Diego said needed to happen.

NC5sWAD2

Birch - Direct

1 MR. KING: Ms. Foote, you can pull that exhibit down
2 and put up what's already in evidence as Government Exhibit
3 501E.

4 Q. Ms. Birch, what is this?

5 A. It's a check I sent to Royal Treasure Chest.

6 Q. And when did you send this check?

7 A. It was the 14th of August of 2020.

8 Q. And how much was this check for?

9 A. 35,000.

10 Q. Why did you get a third check payable to Royal Treasure
11 Chest, LLC?

12 A. Another complication, whether it -- I think it was more for
13 shipping. They ran into problems.

14 Q. What did you do with this \$35,000 check to Royal Treasure
15 Chest, LLC?

16 A. I mailed it.

17 MR. KING: Ms. Foote, if you can please bring up
18 what's already in evidence as Government Exhibit 501F.

19 If you can zoom in on the FedEx label.

20 Q. Ms. Birch, what is this?

21 A. This is the label that I sent the check, previous check,
22 to.

23 Q. And who did you send this check to?

24 A. It was at Walgreens, again, Nadine Wade, at the same
25 address.

NC5sWAD2

Birch - Direct

1 MR. KING: Ms. Foote, can you please pull that exhibit
2 down and put up what's in evidence as Government Exhibit 501G.

3 Q. What is this check, Ms. Birch?

4 A. It's a check that I send to Honcho Ways.

5 Q. How much was this check for?

6 A. \$82,800.

7 Q. And when did you get this check?

8 A. I sent that one on the 22nd of August of 2020.

9 Q. Why did you make this check out to Honcho Ways as opposed
10 to Royal Treasure Chest, LLC?

11 A. If I remember, my memory is that there was another
12 malfunction on the valve, and this was the company that had
13 another valve.

14 Q. What did you do with this check?

15 A. I mailed it.

16 MR. KING: Ms. Foote, can you please bring up what's
17 already in evidence as Government Exhibit 501H.

18 If you can zoom in on the FedEx label.

19 Q. Who did you mail this check to?

20 A. Frank Edwards.

21 Q. At what address did you mail this to?

22 A. 152 Mapes Avenue in Newark.

23 Q. Why did you send this check to Frank Edwards?

24 A. Because that's who Diego told me to send it to.

25 Q. What, if anything, did Diego tell you about Frank Edwards?

NC5sWAD2

Birch - Direct

1 A. I don't remember anything other than he was the person that
2 would handle the check.

3 MR. KING: Ms. Foote, you can put aside 501H, and
4 please bring up what's already in evidence as Government
5 Exhibit 501I.

6 Q. What is this, Ms. Birch?

7 A. It's a check that I sent to Zeevaldor, Inc.

8 Q. And when did you send this check?

9 A. The 24th of August, 2020.

10 Q. How much was this check for?

11 A. 28,650.

12 Q. Why did you make this check out to Zeevaldor, Inc.?

13 A. I don't remember the reason, but I remember that Diego told
14 me to do that.

15 Q. And what, if anything, did you do with this check?

16 A. I mailed it.

17 MR. KING: Ms. Foote, if you can please bring up
18 what's already in evidence as Government Exhibit 501J.

19 Please zoom in on that label. Thank you.

20 Q. What is this, Ms. Birch?

21 A. That's the shipping label.

22 Q. And what did you -- the shipping label for what?

23 A. The previous check.

24 Q. And what did you send this FedEx to?

25 A. Frank Edwards, 7 Longworth Street, Newark.

NC5sWAD2

Birch - Direct

1 Q. And why did you send this check to that address?

2 A. That's what I was told needed to happen.

3 Q. And who told you that?

4 A. Diego.

5 MR. KING: Ms. Foote, you can put that exhibit aside.

6 Q. Ms. Birch, aside from the five checks that we just walked
7 through together, did you send any more money to Diego during
8 your relationship with him?

9 A. No.

10 Q. Did he ask you to send him any more money?

11 A. I think he was going to ask me at one point, but when I
12 answered the phone, I told him that if he wanted -- that I was
13 not going to send him any more money.

14 Q. And why did you say that to him at that time?

15 A. Um, I figured that what he was doing was wrong. I figured
16 that he probably was not going to pay me back like he said he
17 would, and I wasn't going to pay him back -- I wasn't going to
18 give him more money until he paid me what he owed me.

19 Q. Had he made any promises to you about paying you back?

20 A. Yes.

21 Q. What did he say?

22 A. He says, I will pay you back what I owe you plus a lot
23 more.

24 Q. Ms. Birch, after you sent this money to Nadine Wade and
25 Frank Edwards, what, if anything, happened to your relationship

NC5sWAD2

Birch - Direct

1 with Diego?

2 A. Well, after I told him I wasn't sending him any more money,
3 then he got angry at me and told me I was listening to other
4 people and I shouldn't be listening to other people. But just,
5 um, this was something between him and I., but I didn't talk to
6 any other people. He just assumed.

7 Q. Did there come a point in time when your relationship with
8 Diego ended?

9 A. Yes.

10 Q. After it ended, did you ever confront Diego again?

11 A. A couple of days later, I called him. Of course he didn't
12 answer, and then he called me right back. And I told him I
13 wanted my money. And he says, well, just give me your address
14 and I'll send it to you.

15 Q. Ms. Birch, how, if at all, has your encounter with Diego
16 Francisco affected you?

17 A. Um, it was kind of one of the hard things of life. Um,
18 immediately after I realized that I had been scammed, I was in
19 a panic about how am I going to recoup all this money that I
20 foolishly gave to somebody under false pretenses.

21 It made me not sleep. It made me depressed. I was
22 depressed with guilt. I was depressed with embarrassment. I
23 kind of turned inward and wouldn't be -- wouldn't go be with
24 people. I just can't imagine people wanting to be with me.

25 I felt that I was -- I used to be a trusting person,

NC5sWAD2

Birch - Cross

1 and now I feel that everybody is trying to scam me, whether
2 it's a phone call, media, or just somebody saying something to
3 me. I have some trust issues with people. They say -- I'm
4 sorry.

5 If they say something nice to me or about me, I tend
6 to just -- you can't -- you can't be serious. You've got to be
7 lying to me. That is especially with men, that they couldn't
8 possibly find something in me worth trying to develop a
9 relationship.

10 I now have trouble thinking that I can make wise
11 choices, and I think my family thinks the same thing. The
12 hardest thing I had to do was to admit to my family the foolish
13 choice I made to trust somebody and send them money.

14 MR. KING: Thank you, Ms. Birch.

15 I have no further questions for Ms. Birch, your Honor.
16 Thank you.

17 THE COURT: Thank you.

18 Cross exam.

19 MR. SOLOWAY: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. SOLOWAY:

22 Q. Good morning, Ms. Birch.

23 A. Good morning.

24 Q. My name is Robert Soloway. I represent Nadine Wade, the
25 person on trial here.

NC5sWAD2

Birch - Cross

1 If I ask you a question, you don't understand what I'm
2 asking you, please tell me.

3 A. OK.

4 Q. You've testified here today about something that happened
5 to you that was very obviously very hurtful to you, right?

6 A. Yes.

7 Q. And it happened to you because you said that you trusted
8 this so-called Diego Francisco, right?

9 A. Correct.

10 Q. And, in hindsight, you know now that you shouldn't have
11 trusted him?

12 A. Yes.

13 Q. But at the time this person was trying to win you over in
14 the ways you've explained when you were answering Mr. King's
15 questions, right?

16 A. Yes.

17 Q. And you met him you said at a time in your life when you
18 were lonely, right?

19 A. Yes.

20 Q. And you were hoping at that time to meet somebody that you
21 could spend, maybe spend time with, share a bit of your life
22 with?

23 A. Yes.

24 (Continued on next page)

NC5Gwad3

Birch - Cross

1 BY MR. SOLOWAY:

2 Q. And also someone who shared your own basic values and
3 interests?

4 A. Yes.

5 Q. And that is the kind of person that this so-called Diego
6 presented to you; right?

7 A. Yes.

8 Q. And as you talked to him, you formed the belief and the
9 feeling that he might be someone that you could spend some time
10 with?

11 A. Yes.

12 Q. And he made you feel that way by appearing to be open with
13 you; right?

14 A. Yes.

15 Q. By sending you all these images that were admitted into
16 evidence that you just looked at; right? The images of him
17 cooking?

18 A. Yes, those.

19 Q. The images of him in his life?

20 A. Yes.

21 Q. He shared these things with you; right?

22 A. Yes.

23 Q. And he shared personal information with you about his life,
24 in terms of his family; right?

25 A. In terms of his wife.

NC5Gwad3

Birch - Cross

1 Q. He said his wife had died in a car accident five years ago?

2 A. I thought it was an illness.

3 Q. He told you, you said, the kind of work he did; right?

4 A. Yes.

5 Q. And he shared with you also some of the details of that
6 work, including that he was, at the time he started talking to
7 you, bidding on a job to do some underwater welding on an oil
8 rig; right?

9 A. Yes.

10 Q. There was a problem, a leak, and he was bidding and hoping
11 to get a contract to be able to repair that damage on the oil
12 rig?

13 A. Yes.

14 Q. Right?

15 A. Yes.

16 Q. And there came a time that he shared with you that he was
17 happy that he had won the contract to do the job; right?

18 A. Yeah.

19 Q. And you mentioned that he sent you a bunch of photographs
20 and some of them were actually of him that we looked at just
21 now, supposedly on this oil rig and supposedly on the oil
22 rig --

23 A. Yes.

24 Q. -- with his crew?

25 A. Yes.

NC5Gwad3

Birch - Cross

1 Q. Did he also send you images of him supposedly actually
2 doing work, repair work in the water on the oil rig, do you
3 remember that?

4 A. Yeah, I do. I didn't save any of those photos. I do
5 remember that one of the things that I do -- those photos, he
6 had a different mask in the water than he did on the shore or
7 on the rig, and I asked him why. And he didn't say or didn't
8 answer me.

9 Q. How about images of him fishing off out the oil rig with
10 his crew, do you remember receiving those kinds of images?

11 A. Yes.

12 Q. And so because of all of this sharing, you felt like you
13 were really getting to know this person; right?

14 A. Yes.

15 Q. And those images that were giving you a sense of who this
16 person was contributed to the feelings you were having toward
17 him in terms of liking him; right?

18 A. Yes.

19 Q. And he also made gestures and efforts to make you believe
20 that he was interested in you; right?

21 A. Yes.

22 Q. When you sent him a photo of yourself, he said he thought
23 you were beautiful?

24 A. Yes.

25 Q. At one point, pretty early in the interactions, he called

NC5Gwad3

Birch - Cross

1 you sweet?

2 A. Yes.

3 Q. On the rig, when he was supposedly on the rig, he told you
4 that, as soon as he was finished with the job, he would leave
5 from New Orleans and come to your town in St. George to meet
6 you personally; right?

7 A. Yes.

8 Q. And you were even making hotel reservations for him in your
9 town and letting him know about them; right?

10 A. Yes.

11 Q. He also, during the time when he was having you send him
12 money, he sent you bank statements to prove his worth, his
13 value, how much wealth he had; right?

14 A. Yes.

15 Q. And it was a lot of money --

16 A. Yes.

17 Q. -- reflected in those statements; right?

18 A. Yes.

19 Q. And based on all of the things that you were receiving and
20 the things that you seem to be genuinely exchanging, you were
21 hoping that you would meet this man and things might work out
22 between the two of you; right?

23 A. Yes.

24 Q. When you sent him the money that you sent him, is it
25 correct that you sent him the money because you believed that

NC5Gwad3

Birch - Redirect

1 you were sending it to someone that cared for you?

2 A. Yes.

3 Q. Again, you wanted and hoped that things would work out
4 between the two of you?

5 A. Yes.

6 Q. But then what happened is, in your life, that everything
7 just fell apart; right?

8 A. Yes.

9 MR. SOLOWAY: Thank you. I have nothing further.

10 THE COURT: Any redirect from the government?

11 MR. KING: Yes, your Honor.

12 THE COURT: Briefly?

13 MR. KING: Yes, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. KING:

16 Q. Ms. Birch, you testified that you sent around \$160,000 to
17 Diego; right?

18 A. Yes.

19 Q. Did Diego ever send you money?

20 A. No.

21 Q. Did you ever get any money from him to go to department
22 stores?

23 A. No.

24 Q. Did you ever get any money from him to go to restaurants?

25 A. No.

NC5Gwad3

Birch - Redirect

1 Q. Did you ever get any money from him to travel?

2 A. No.

3 Q. You also testified that, at a certain point, you stopped
4 sending money to Diego; is that right?

5 A. Yes.

6 Q. Did you continue sending him money for years?

7 A. No.

8 Q. Did you continue sending money for months?

9 A. No.

10 Q. Did all the money you sent Diego happen in one month in
11 August of 2020?

12 A. Yes.

13 Q. And then did you stop?

14 A. Yes.

15 Q. Why did you stop sending him money?

16 A. Because I figured that he was never going to pay me back or
17 I wasn't going to send him money until he paid me back.

18 MR. KING: No further questions, your Honor.

19 THE COURT: Thank you very much.

20 MR. SOLOWAY: I have a question, Judge.

21 THE COURT: No, that's okay.

22 You may step down. Thank you.

23 THE COURT: Would the government please call its next
24 witness.

25 MR. FERGENSON: The government calls Julia Gutierrez.

NC5Gwad3

Birch - Redirect

1 THE COURT: Let me check in with the parties. Would
2 this be an appropriate time to take our morning five-minute
3 break? I'm getting nods.

4 If I can ask the government to have the witness ready
5 in five minutes. We will take our morning break. And I'll
6 remind you of things you are going to hear from me at every
7 break. Do not discuss this case with each other or with anyone
8 else. We'll see you in five minutes.

9 (Recess)

10 (In open court; jury present)

11 THE COURT: You may proceed.

12 MR. KING: Your Honor, if I may, before we get to
13 Ms. Gutierrez's testimony, the government would like to enter a
14 stipulation into evidence.

15 THE COURT: Is this a testimonial or an evidentiary
16 stipulation?

17 MR. KING: Evidentiary, your Honor. Thank you.

18 THE COURT: Is there any objection from the defense?

19 MR. SOLOWAY: No.

20 THE COURT: Could you tell me, please, what the
21 exhibit number is of the stipulation.

22 MR. KING: It is Government Exhibit S1.

23 THE COURT: It is admitted into evidence and may be
24 published to the jury.

25 (Government Exhibit S1 received in evidence)

NC5Gwad3

Birch - Redirect

1 THE COURT: We spoke about stipulations. What I said
2 to you is a stipulation is an agreement between the parties.
3 Sometimes it's a stipulation that certain facts are to be taken
4 as true. What you do with those facts is up to you. Sometimes
5 it's a stipulation about testimony, what someone would say if
6 they were called to testify.

7 Counsel, you may continue.

8 MR. KING: Ms. Foote, if you would publish that to the
9 jury.

10 It is hereby stipulated and agreed that the following
11 government exhibits are true and accurate copies of records
12 maintained by the below businesses. And I'll read the
13 businesses that are referenced:

14 Bank of America, Capital One, Citibank, Citizens Bank,
15 TD Bank, Valley National Bank, Wells Fargo, JPMorgan Chase,
16 HSBC, PNC Bank, Block, Inc. or Cash App, Robinhood Markets,
17 Inc., Western Union, Federal Express, Green Property LLC,
18 Copart and IAA.

19 The government exhibits listed above relating to those
20 businesses were made at or near the time by, or from
21 information transmitted by, a person with knowledge or kept in
22 the course of regularly conducted business activity of each
23 business, it being the regular practice of that business
24 activity to make such records.

25 The parties further stipulate and agree that the

NC5Gwad3

Birch - Redirect

1 stipulation, which is Government Exhibit S1, as well as the
2 other government exhibits described in the stipulation, may be
3 received into evidence as government exhibits at trial.

4 And your Honor, the government offers the stipulation
5 and Government Exhibits 101A through 101B, 111A through 111D,
6 112A through 112E, 113A through 113E, 114A through 114D, 115A
7 through 115S, 121A through 121C, 122A through 122C, 123A
8 through 123C, 124A through 124C, 125A through 125G, 126A
9 through 126M, 131A through 131M, 132A through 132E, 140A
10 through 140K, 141A through 141E, 142A through 142I, 143A
11 through 143E, 144A through 144E, 145A through 145F, 146A
12 through 146H, 147A through 147G, 148A through 148F, 149A
13 through 149E, 151A through 151B, 152A through 152C, 161A
14 through 161H, 162A through 162E, 163A through 163C, 171A
15 through 171B, 172A through 172B, 173A through 173B, 174A
16 through 174B, 181A through 181E, 182A through 182D, 183A
17 through 183D, 919 --

18 THE COURT: 191 is what you meant to say.

19 I'll imagine that is amended, if the defense agrees.

20 MR. SOLOWAY: Yes.

21 THE COURT: And I think you had an 11C, but we'll go
22 with 191A through E, and please continue from there.

23 MR. KING: Thank you, your Honor.

24 201A through 201B and of course the government offers
25 191A through 191E, 202A through 202C, 203A through 203B,

NC5Gwad3

Birch - Redirect

1 Government Exhibits 401 through 407, Green Property, 71 through
2 74, 61A and 62A through 62F.

3 THE COURT: All of those exhibits, as just corrected
4 for those two, are admitted into evidence. Thank you very
5 much.

6 (Government Exhibits 101A through 101B, 111A through
7 111D, 112A through 112E, 113A through 113E, 114A through 114D,
8 115A through 115S, 121A through 121C, 122A through 122C, 123A
9 through 123C, 124A through 124C, 125A through 125G, 126A
10 through 126M, 131A through 131M, 132A through 132E, 140A
11 through 140K, 141A through 141E, 142A through 142I, 143A
12 through 143E, 144A through 144E, 145A through 145F, 146A
13 through 146H, 147A through 147G, 148A through 148F, 149A
14 through 149E, 151A through 151B, 152A through 152C, 161A
15 through 161H, 162A through 162E, 163A through 163C, 171A
16 through 171B, 172A through 172B, 173A through 173B, 174A
17 through 174B, 181A through 181E, 182A through 182D, 183A
18 through 183D, 191A through E, 201A through 201B, 202A through
19 202C, 203A through 203B, 401 through 407, 71 through 74, 61A
20 and 62A through 62F received in evidence)

21 MR. KING: Thank you, your Honor.

22 The government now calls Ms. Gutierrez.

23 JULIA GUTIERREZ,

24 called as a witness by the Government,

25 having been duly sworn, testified as follows:

NC5Gwad3

Gutierrez - Direct

1 THE COURT: Counsel, you may inquire.

2 DIRECT EXAMINATION

3 BY MR. FERGENSON:

4 Q. Good morning, Ms. Gutierrez.

5 A. Good morning.

6 Q. Where do you work?

7 A. The US Attorney's Office.

8 Q. What is your title at the US Attorney's Office?

9 A. Paralegal.

10 Q. What are your responsibilities as a paralegal at the US
11 Attorney's Office?

12 A. I draft legal documents, I'll assist with some trials, I
13 handle evidence and then other tasks that come up.

14 Q. Perhaps we can repeat the question.

15 Ms. Gutierrez, what are some of your responsibilities
16 as a paralegal at the US Attorney's Office?

17 A. I'll draft legal documents, I'll assist with trials, like
18 Ms. Foote is doing, handle evidence for the attorneys and other
19 tasks that come up I'll handle.

20 Q. Now, Ms. Gutierrez, besides your testimony today and
21 preparation for that testimony, did you have any involvement in
22 this case?

23 A. No.

24 Q. Were you asked to review certain government exhibits and
25 summarize the information in them?

NC5Gwad3

Gutierrez - Direct

1 A. Yes.

2 Q. Did you help prepare and review for accuracy some summary
3 charts?

4 A. Yes.

5 Q. Are the charts all based on voluminous records?

6 A. Yes.

7 Q. What type or types of exhibits are the charts based on?

8 A. Some records from Google as well as some records from
9 FedEx.

10 Q. Now, Ms. Gutierrez, who decided which exhibits you reviewed
11 and what information to include on the charts?

12 A. The prosecutors on the case.

13 Q. And were you provided the opportunity to make additions and
14 revisions to the charts to make sure they were accurate?

15 A. Yes.

16 Q. Did you in fact make revisions and additions to the charts?

17 A. Yes, I did.

18 Q. And after you edited the charts, are they all now accurate?

19 A. Yes.

20 Q. Now, just to be clear, did you review all the evidence
21 gathered in this case or just the charts and the exhibits those
22 charts are based on?

23 A. Just the exhibits the charts are based on.

24 Q. Now, Ms. Gutierrez, you mentioned that one type of exhibit
25 you reviewed was from Google?

NC5Gwad3

Gutierrez - Direct

1 A. Yes.

2 MR. FERGENSON: Your Honor, at this time, the
3 government offers a stipulation between the parties marked
4 Government Exhibit S4.

5 THE COURT: I'm assuming part of the stipulation is
6 the admission of the stipulation itself into evidence.

7 MR. FERGENSON: Correct.

8 THE COURT: Is that correct, counsel?

9 MR. STERN: It is correct, yes.

10 THE COURT: Thank you.

11 Government Exhibit S4 is admitted into evidence. It
12 may be published to the jury. And you may read from it, sir.

13 (Government Exhibit S4 received in evidence)

14 MR. FERGENSON: Thank you, your Honor.

15 Please publish.

16 This is a stipulation regarding Google records. It is
17 hereby stipulated and agreed that: Individuals with a Google
18 account can use the Google products Gmail and Google Voice.
19 Gmail is an email messaging service. Google Voice is a
20 voice-over-internet-protocol ("VoIP") phone service that offers
21 Google Voice users a phone number. Google Voice users can then
22 use that phone number to make and receive calls or to send and
23 receive text messages. Google Voice users can set their
24 preferences such that text messages sent to their Google Voice
25 phone number will also be received as emails to their Gmail

NC5Gwad3

Gutierrez - Direct

1 account.

2 Government Exhibits 1001 to 1018, 1101 to 1109, 1201,
3 1301 to 1305, 1401 to 1405, 1501, 1502, 1601 to 1647, 1701 to
4 1731, 1801 to 1831 and 1901 to 1906 are authentic copies of
5 records -- including Gmail and Google Voice records -- that
6 were obtained, pursuant to a court-authorized search warrant
7 from the Google accounts associated with the following email
8 addresses:

9 Italianrichb@gmail.com (the "Italianrichb Google
10 Account");

11 Italiantomamo@gmail.com (the "Italiantomamo Google
12 Account"); and

13 Italiangraylight@gmail.com (the "Italiangraylight
14 Google Account").

15 The Italianrichb Google Account was subscribed to in
16 the name D Francisco and its Google Voice phone number was
17 407-584-7685. Government Exhibit 1013 is an authentic copy of
18 text messages and call logs for the Google Voice phone number
19 or the Italianrichb Google Account from the period October 6,
20 2019 to June 10, 2020. Incoming text messages -- including
21 multimedia message service ("MMS") messages, such as
22 photographs -- were also sent by email to
23 italianrichb@gmail.com.

24 The Italiantomamo Google Account was subscribed to in
25 the name "Tom E Francisco" and its Google Voice number was

NC5Gwad3

Gutierrez - Direct

1 321-209-5057 --

2 THE COURT: 5075, perhaps. I may have heard you
3 incorrectly.

4 MR. FERGENSON: 5075. Thank you, your Honor.

5 THE COURT: Of course.

6 MR. FERGENSON: Government Exhibit 1014 is an
7 authentic copy of text messages and call logs for the Google
8 Voice phone number of the Italianantomamo Google Account from the
9 period June 4, 2019 to November 14, 2019. Incoming text
10 messages -- including MMS messages, such as photographs -- were
11 also sent by email to italianantomamo@gmail.com.

12 The Italiangraylight Google Account was subscribed to
13 in the name "Diego Francisco" and its Google Voice number was
14 801-332-9439. Government Exhibit 1015 is an authentic copy of
15 text messages and call logs for the Google Voice phone number
16 of the Italiangraylight Google Account from the period November
17 5, 2019 to August 7, 2020. Incoming text messages -- including
18 MMS messages, such as photographs -- were also sent by email to
19 italiangraylight@gmail.com.

20 Google accountholders can set up recovery email
21 addresses that can be used, for example, to reset passwords.
22 The recovery email address for the Italianrichb Google Account
23 was italianantomamo@gmail.com. The recovery email address for
24 the Italiangraylight Google Account was italianrichb@gmail.com.

25 The parties further stipulate and agree that this

NC5Gwad3

Gutierrez - Direct

1 stipulation, which is Government Exhibit S4 and the other
2 government exhibits described in this stipulation may be
3 received into evidence as government exhibits at trial.

4 Pursuant to the stipulation, your Honor, the
5 government offers the government exhibits listed in paragraph
6 two of the stipulation.

7 THE COURT: All of the exhibits listed in paragraph
8 two, as clarified by our discussions, plus the stipulation, are
9 received into evidence.

10 (Government Exhibits 1001 to 1018, 1101 to 1109,
11 1201, 1301 to 1305, 1401 to 1405, 1501, 1502, 1601 to 1647,
12 1701 to 1731, 1801 to 1831 and 1901 to 1906 received in
13 evidence)

14 THE COURT: Thank you very much. You may continue,
15 sir.

16 MR. FERGENSON: Thank you, your Honor.

17 It's not on my screen, but I have a hard copy.

18 THE COURT: We can hand you a hard copy if you want.

19 MR. FERGENSON: I have one of the stipulation, but it
20 may become more problematic soon, your Honor. We'll see how it
21 goes.

22 THE COURT: Yes.

23 BY MR. FERGENSON:

24 Q. Ms. Gutierrez, focusing you on paragraph two of the
25 stipulation, did you review the records described in that

NC5Gwad3

Gutierrez - Direct

1 paragraph?

2 A. Yes.

3 Q. And those included text messages and call logs for three
4 different Google voice numbers, as are described in paragraph
5 three and five?

6 A. Yes.

7 MR. FERGENSON: If you can scroll down.

8 Q. So paragraphs three and five discuss those Google accounts;
9 correct, Ms. Gutierrez?

10 A. Correct.

11 Q. Let's just look at one of them.

12 Do you see the stipulation in paragraph five says that
13 Government Exhibit 1015 is an authentic copy of text messages
14 and call logs for the Google voice phone number of the
15 Italiangraylight Google Account.

16 Do you see that?

17 A. Yes.

18 MR. FERGENSON: Now, Ms. Foote, could you please pull
19 up what's in evidence as Government Exhibit 1015.

20 Q. Now, Ms. Gutierrez, we'll look at the chart of text, but
21 let me first focus you on the top left.

22 What's the email address listed there?

23 A. Italiangraylight@gmail.com.

24 Q. What's the name?

25 A. Diego Francisco.

NC5Gwad3

Gutierrez - Direct

1 Q. And what is the voice number?

2 A. It's (801)332-9439.

3 MR. FERGENSON: Let's zoom out, Ms. Foote, please.

4 Q. Focusing you on the chart beneath that, what do the columns
5 say?

6 A. So starting from the left, it's Google Voice number, then
7 phone number, type, date/time, duration in seconds, and text
8 content.

9 MR. FERGENSON: Ms. Foote, let's zoom out. And could
10 you scroll for a few pages.

11 Q. Ms. Gutierrez, is this exhibit over 400 pages?

12 A. Yes.

13 MR. FERGENSON: That's fine, Ms. Foote. Thank you.

14 Q. If this account received a photo over text message, would
15 that photo appear in this file?

16 A. No, it wouldn't.

17 MR. FERGENSON: Ms. Foote, could you please go back to
18 the stipulation, S4 at page two.

19 Q. Now, again, at paragraph five, the final sentence says,
20 incoming text message, including MMS messages, such as
21 photographs, were also sent by email to
22 italiangraylight@gmail.com.

23 Do you see that that, Ms. Gutierrez?

24 A. Yes.

25 Q. Is that consistent with your review of the exhibits?

NC5Gwad3

Gutierrez - Direct

1 A. Yes.

2 Q. Now, Ms. Gutierrez, at a high level, what were the text
3 message summaries you helped review and prepare for accuracy?

4 A. They were records from Google.

5 Q. What did you do with those records from Google to make the
6 summary?

7 A. I basically -- we put the text messages into an Excel
8 format so they were more readable, because the format you just
9 saw was not readable at all. And then we put in the
10 photographs when they were sent to this email account and
11 matched it up accordingly.

12 Q. Did you do that for numerous chats and photos?

13 A. Yes.

14 Q. Ms. Gutierrez, did you also incorporate Federal Express
15 records into those text message summaries?

16 A. Yes, I did.

17 Q. How did you incorporate FedEx records?

18 A. When there was a picture that included a FedEx tracking
19 number, I matched that tracking number with the records that we
20 received from FedEx, and then I put a snip, like a screenshot,
21 of the FedEx records at the bottom of the text chain so that
22 everything was in one place.

23 MR. FERGENSON: Ms. Foote, could you please show just
24 Ms. Gutierrez Government Exhibit 404.

25 Q. Is it up on your screen?

NC5Gwad3

Gutierrez - Direct

1 A. I can see it.

2 THE COURT: What was the exhibit number, 404? I
3 didn't hear it.

4 MR. FERGENSON: 404.

5 THE COURT: Thank you so much.

6 MR. FERGENSON: It's now up on my screen. Actually,
7 we can publish this to all. I apologize, Ms. Foote.

8 BY MR. FERGENSON:

9 Q. Ms. Gutierrez, are these the sorts of FedEx records you
10 incorporated into the summaries?

11 A. Yes.

12 MR. FERGENSON: Now, Ms. Foote, let's show just the
13 witness Government Exhibit 900S, please.

14 Q. Ms. Gutierrez, what is this a chart of?

15 A. It's a summary chart that lists some of the text summary
16 charts and then their source exhibits.

17 Q. Is this chart accurate?

18 A. Yes.

19 MR. FERGENSON: The government offers Government
20 Exhibit 900S.

21 MR. STERN: No objection.

22 THE COURT: Government Exhibit 900S is admitted into
23 evidence and may be shown to the jury, thank you.

24 (Government Exhibit 900S received in evidence)

25 BY MR. FERGENSON:

NC5Gwad3

Gutierrez - Direct

1 Q. Ms. Gutierrez, let me focus you first on the second column
2 that starts at the header, summary GX.

3 Do you see that?

4 A. Yes.

5 Q. And what's listed in that column?

6 A. That is the summary Excel sheet of the text messages.

7 Q. And then to the left of that is a column that says "name."
8 Where does the name column come from?

9 A. The name comes from the source emails.

10 Q. In the three columns on the right, each one starts with
11 source GX; right?

12 A. Yes.

13 Q. And what's shown in those columns?

14 A. Those are the source exhibits. So the leftmost is the
15 Google chat records. The middle is the email records, which
16 would have those photos and the messages. And then all the way
17 to the right is the FedEx records.

18 Q. Ms. Gutierrez, you said earlier, but do the summary
19 exhibits listed in the second column accurately summarize
20 information in the source government exhibit column?

21 A. Yes.

22 MR. FERGENSON: The government offers the exhibits
23 listed in the summary GX column, Government Exhibits 911 to
24 915, 921, 931, 941 to 944, 951 to 965, 971 to 979, 981 to 986,
25 991.

NC5Gwad3

Gutierrez - Direct

1 MR. SOLOWAY: No objection.

2 THE COURT: All of these exhibits are admitted into
3 evidence, and they may be shown to the jury.

4 (Government Exhibits 911 to 915, 921, 931, 941 to 944,
5 951 to 965, 971 to 979, 981 to 986, 991 received in evidence)

6 BY MR. FERGENSON:

7 Q. Ms. Gutierrez, we'll look at all of these, but not
8 necessarily in this exhibit. Let's start with a Joy Birch text
9 summary as an example.

10 MR. FERGENSON: Ms. Foote, can you publish Government
11 Exhibit 921.

12 Q. Now, Ms. Gutierrez, I want to focus you first on the first
13 two rows of this exhibit.

14 What is shown in these first two rows?

15 A. It's the date of the message, which is July 27th, 2020, and
16 then the second row is a message and some data about the
17 message.

18 Q. And that message is the same date as the bar above it?

19 A. Yes.

20 Q. What does the first message say?

21 A. Hi, Joy. This is Diego from LDSPlanet.

22 Q. Ms. Gutierrez, is that message sent to the Google account
23 or from the Google account?

24 A. It's sent from the Google account. It's an outgoing
25 message.

NC5Gwad3

Gutierrez - Direct

1 Q. What color are the outgoing messages in all the text
2 summaries?

3 A. Blue.

4 Q. What color are all the incoming messages in all the text
5 summaries?

6 A. White.

7 Q. What color are phone calls or voice mails?

8 A. Gray.

9 Q. Now, let's go to that outgoing text. What number is that
10 text sent to from the Google account?

11 A. It's sent to the 317 phone number.

12 Q. Is there a name listed next to that phone number?

13 A. Not on this chart. But in the Google email records, there
14 is.

15 Q. No?

16 A. No, not on this chart.

17 MR. FERGENSON: Ms. Foote, if you zoom out.

18 Q. There's a name in the top left?

19 A. Yes.

20 Q. Where is that name taken from?

21 A. That's from the Google email records.

22 MR. FERGENSON: Ms. Foote, could you please add on the
23 right Government Exhibit 1201. Thank you, Ms. Foote.

24 Q. Now, focusing you on the header information on the right.

25 Is this an email to italiangraylight@gmail.com?

NC5Gwad3

Gutierrez - Direct

1 A. Yes.

2 Q. Is this one of the emails you reviewed?

3 A. Yes.

4 Q. Who is it from?

5 A. Joy Birch.

6 Q. Can you read the subject line.

7 A. New text message from Joy Birch/UT 317-755-9536.

8 Q. Is that number listed in the subject line the same shown in
9 the summary message chart?

10 A. Yes.

11 Q. Is that where the name came from on the text summary?

12 A. Yes.

13 MR. FERGENSON: Thank you, Ms. Foote. Let's just
14 focus on Government Exhibit 921, please.

15 Q. Now, Ms. Gutierrez, let's go ahead and read the August 6th,
16 2020 messages and I'll read the Italiangraylight messages, the
17 outgoing blue, and you please read Ms. Birch's messages.

18 A. We have a problem on the rig. I will text you soon.

19 Are you okay?

20 Q. Hi sweetie. Can you talk on Skype?

21 A. Yes.

22 Q. Pick my call and talk to me.

23 And then there's a call.

24 Pay too/Royal Treasure Chest LLC, mail to Nadine J
25 Wade, address, 244 East 161st Street, the Bronx, New York

NC5Gwad3

Gutierrez - Direct

1 10451. Once your bank issue the cashier's check, you will take
2 a picture of the check and send it to my phone and you will
3 also send me FedEx receipt. I need to forward both copies to
4 them as proof of payment. I promise I will pay you back. You
5 have my word.

6 A. Okay.

7 Q. There is a missed call and --

8 A. The OKC name is legit. Oops the LLC.

9 Q. Yes. Pay too Royal Treasure Chest LLC.

10 And then there is a voice mail and a call.

11 You will send me a copy of the cashier's check and a
12 copy of the receipt.

13 Ms. Gutierrez, there are two incoming photographs?

14 A. Yes.

15 MR. FERGENSON: Let's zoom on the check first, please.

16 Q. Ms. Gutierrez, what kind of check is this?

17 A. It's a cashier's check.

18 Q. On what date?

19 A. August 6th, 2020.

20 Q. And that's the same date as these messages?

21 A. Yes.

22 Q. What was the amount?

23 A. \$8,500.

24 Q. And Ms. Gutierrez, is there a remitter listed on this
25 check?

NC5Gwad3

Gutierrez - Direct

1 A. Yes.

2 Q. Who is the remitter?

3 A. Joy Birch.

4 Q. And who was this \$8,500 check from Joy Birch payable to?

5 A. Royal Treasure Chest LLC.

6 MR. FERGENSON: Let's zoom back out, Ms. Foote.

7 Let's zoom on the FedEx envelope.

8 Q. Now, Ms. Gutierrez, who was the addressee of this FedEx
9 envelope?

10 A. It says to Walgreens, attention Nadine J Wade.

11 Q. And the address is 244 East 161st Street in the Bronx?

12 A. Yes.

13 Q. Now, Ms. Gutierrez, focusing you on the top left of front
14 of the FedEx envelope, is there a name listed there?

15 A. The top left, yes.

16 Q. And what's the name?

17 A. Joy Birch.

18 Q. And are you able to read the city and the state of the
19 address listed beneath that?

20 A. It says St. George, Utah, UT.

21 Q. And that's on the front of this FedEx envelope; right?

22 A. Yes.

23 MR. FERGENSON: Let's zoom back out, Ms. Foote,
24 please.

25 Q. Ms. Gutierrez, we just looked at that FedEx envelope,

NC5Gwad3

Gutierrez - Direct

1 attention Nadine Wade at 244 East 161st Street; right?

2 A. Right.

3 MR. FERGENSON: Your Honor, at this time, the
4 government offers another stipulation between the parties,
5 Government Exhibit S2.

6 THE COURT: Once again, the parties have stipulated
7 the stipulation be received in evidence.

8 MR. FERGENSON: I believe so.

9 THE COURT: Mr. Stern.

10 MR. STERN: He's correct.

11 THE COURT: Government Exhibit S2 is admitted into
12 evidence and may be published and read to the jury. Thank you.

13 (Government Exhibit S2 received in evidence)

14 MR. FERGENSON: The following government exhibits are
15 true and accurate images of the following addresses: And I
16 will just read Government Exhibit 11 now, which is 244 East
17 161st Street in the Bronx, New York.

18 The parties further stipulate and agree that this
19 stipulation, which is Government Exhibit S2, as well as the
20 other government exhibits described in this stipulation may be
21 received into evidence.

22 THE COURT: A little slower for the court reporter and
23 the judge. Thank you very much.

24 MR. FERGENSON: Yes. Thank you, your Honor.

25 The government offers Government Exhibits 11, 12, 13,

NC5Gwad3

Gutierrez - Direct

1 14 and 15.

2 THE COURT: All are admitted into evidence and may be
3 published to the jury.

4 (Government Exhibits 11 through 15 received in
5 evidence)

6 MR. FERGENSON: Ms. Foote, can we please publish
7 Government Exhibit 11, which is the address 244 East 161st
8 Street, the photograph.

9 Ms. Foote, let's go back to Government Exhibit 921 at
10 page two. Then it continues.

11 I got it. Thank you. I will get back to you. I need
12 to forward the copies.

13 Ms. Foote, can you zoom one last time on that FedEx
14 envelope.

15 BY MR. FERGENSON:

16 Q. Ms. Gutierrez, could you please read the last four digits
17 of the FedEx tracking number.

18 A. 0643.

19 MR. FERGENSON: Ms. Foote, let's zoom out and go to
20 the next line.

21 Q. Ms. Gutierrez, what's the FedEx tracking number, what's the
22 last four?

23 A. It's the same. It ends in 0463.

24 Q. Let's quickly go through the rows shown on this FedEx
25 record, Ms. Gutierrez.

NC5Gwad3

Gutierrez - Direct

1 So the first record says package details, do you see
2 that?

3 A. Yes.

4 Q. And the next row is titled what?

5 A. Shipper.

6 Q. And what's the name of the shipper?

7 A. Joy Birch.

8 Q. And then the row beneath that, there's recipient.

9 Do you see that?

10 A. Yes.

11 Q. And what's under company in recipient?

12 A. Attention Nadine J Wade.

13 Q. And then the row beneath that is delivery. And do you see
14 on the far left, it says timestamp?

15 A. Yes.

16 Q. And what was the date and time of delivery?

17 A. August 7th, 2020 at 1340.

18 Q. Beneath that, there's a row called signature.

19 Do you see that?

20 A. Yes.

21 Q. Who signed for this FedEx envelope from Joy Birch?

22 A. N Wade.

23 Q. Thank you.

24 MR. FERGENSON: Ms. Foote, we can take that down.

25 Q. Ms. Gutierrez, we have now seen a cashier's check made out

NC5Gwad3

Gutierrez - Direct

1 to Royal Treasure Chest LLC; correct?

2 A. Correct.

3 MR. FERGENSON: Your Honor, the government offers
4 another stipulation, marked as S6 and it is stipulated it is
5 admissible.

6 THE COURT: Thank you.

7 Given that Government Exhibit S6 is admitted into
8 evidence, it may be published to the jury as it is read to
9 them. Thank you.

10 (Government Exhibit S6 received in evidence)

11 MR. FERGENSON: Government Exhibits 51, 52 and 53 are
12 true and correct copies of records maintained by the New York
13 Department of State, that set forth the activities of the New
14 York Department of State.

15 Government Exhibits 54 and 55 are true and correct
16 copies of records, maintained by the New Jersey Department of
17 the Treasury, Division of Revenue and Enterprise Services, that
18 set forth the activities of the New Jersey Department of the
19 Treasury, Division of Revenue and Enterprise Services.

20 The parties further stipulate and agree that this
21 stipulation, which is Government Exhibit S6, as well as the
22 other government exhibits described in this stipulation may be
23 entered into evidence as government exhibits at trial.

24 The government offers Government Exhibits 51 through
25 55.

NC5Gwad3

Gutierrez - Direct

1 THE COURT: They are received in evidence and may be
2 shown to the jury. Thank you.

3 (Government Exhibits 51 through 55 received in
4 evidence)

5 MR. FERGENSON: Thank you, your Honor.

6 Ms. Foote, please publish to the jury Government
7 Exhibit 51.

8 Q. Ms. Gutierrez, in the top left, what is the business name
9 on this document?

10 A. Royal Treasure Chest LLC.

11 Q. What is the filing period?

12 A. January 2020.

13 Q. Beneath that, what is the service of process address?

14 A. 779 Concourse Village E, Apartment 3M in the Bronx, New
15 York 10451.

16 Q. Beneath that, where it says signer information, who signed
17 this document?

18 A. Nadine Wade.

19 Q. And she signed as an authorized person?

20 A. Yes.

21 MR. FERGENSON: Let's go to page two, Ms. Foote.

22 Q. Ms. Gutierrez, which company's articles of organization are
23 these?

24 A. Royal Treasure Chest LLC.

25 Q. Directing you to the bottom right of this document, what

NC5Gwad3

Gutierrez - Direct

1 was the date this document was filed?

2 A. January 18th, 2018.

3 Q. And over on the left, who are these articles of
4 incorporation filed by?

5 A. Nadine J Wade.

6 Q. Is that the same address as the 779 Concourse Village that
7 was on the service of process?

8 A. Yes.

9 MR. FERGENSON: Ms. Foote, let's pull up Government
10 Exhibit S2, and on the right Government Exhibit 15.

11 Now, I'll just read paragraph two of the stipulation.

12 Government Exhibit 15 is a true and accurate map
13 showing 244 East 161st Street, Bronx, New York and
14 779 Concourse Village, Bronx, New York.

15 Q. Now, Ms. Gutierrez, the 779 Concourse Village, that's the
16 address we just looked at on the Royal Treasure Chest
17 documents?

18 A. Yes.

19 Q. The 244 East 161st Street, is that an address for the
20 Walgreens in the Bronx?

21 A. Yes.

22 MR. FERGENSON: We can take that down.

23 Let's pull up Government Exhibit 900S.

24 Q. Now, we looked at, Ms. Gutierrez, the Joy Birch example.

25 Let's go to another example. Let's go to Clemi Carter Arbaugh.

NC5Gwad3

Gutierrez - Direct

1 What's the name in the top left, Ms. Gutierrez?

2 A. Clemi Carter Arbaugh.

3 (Continued on next page)

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NC5sWAD4

Gutierrez - Direct

1 BY MR. FERGENSON:

2 Q. What's the name in the top left, Ms. Gutierrez?

3 A. Clemi Carter Arbaugh.

4 Q. What's the date?

5 A. May 13, 2020.

6 Q. OK. I'll read the blue and you, please, read the white.

7 Hi, Carter. This is Diego from LoveAndSeek.

8 A. Hello. I've never met anyone named Diego before. I

9 remember the name from the children's program Dora the

10 Explorer. I like the name.

11 Q. Thank you. Tell me more about you. How long have you been
12 single and how many kids do you have?

13 A. My husband has been dead for two years. I am just starting
14 to think about maybe meeting someone. I have two sons and a
15 daughter and, of course, I think they are amazing. You?

16 Q. Sorry for your loss. I have a son Alberto, who is 28 years
17 currently studying as a medical doctor at Sapienza University
18 in Rome. I lost my wife five years in Italy in a ghastly motor
19 accident. Since then, I have been single. Also, I lost my dad
20 many years ago, eight years ago, but my mum still lives in
21 Italy and she is 89 years old. Every Christmas period I travel
22 to Rome to visit my family and spend the season with them.

23 I'll just pause for a moment.

24 Ms. Gutierrez, where there are three asterisks like
25 that, what does that signify.

NC5sWAD4

Gutierrez - Direct

1 A. Just a break in the texts. We didn't include all of them.

2 Q. OK. So starting after the break, I will try to find on
3 swipe using your e-mail address.

4 A. The account is registered under C. Carter Arbaugh, my cell,
5 and my e-mail.

6 Q. OK. Ms. Gutierrez --

7 MR. FERGENSON: Excuse me. Ms. Foote, let's please go
8 to Government Exhibit 912.

9 Q. Now, Ms. Gutierrez, same name in the top left here?

10 A. Yes.

11 Q. Still Ms. Arbaugh?

12 A. Yes.

13 Q. What is the dates of these messages?

14 A. It's May 23 through 26, 2020.

15 Q. I'll read the --

16 So that's about ten days later, right?

17 A. Yes.

18 Q. OK. So I'll read the blue, you, please, read the white.

19 You will issue the cashier's check with the name
20 below. Pay to: Royal Treasure Chest, LLC. Then you will
21 drive to FedEx and overnight the check to, name, Nadine J.
22 Wade, address, 244 East 161st Street, the Bronx, New York.

23 Once your bank issue the cashier's check, take a
24 picture of the check and send it to me. Once you send the
25 check via FedEx, send me a picture of FedEx receipt. I need to

NC5sWAD4

Gutierrez - Direct

1 forward both pictures to the company as proof of payment. It's
2 not always a bed of roses in a relationship. There comes the
3 ups and downtimes. I believe that we are facing our hard times
4 and if we stay strong, we will scale through, and the light is
5 just there at the end of the tunnel. I want you to know that
6 I'm not here to take advantage of you. All I want is for you
7 to trust me with anything and feel safe and secure, the same
8 way I feel about you.

9 Then there is a break.

10 And I was just reading messages on May 23, right,
11 Ms. Gutierrez?

12 A. Yes.

13 Q. And the break comes and now the messages are May 26, right?

14 A. Yes.

15 Q. OK. I am sending the information again. You will issue
16 the cashier's check with the name below. Pay to: Royal
17 Treasure Chest, LLC. Then you will drive to FedEx and
18 overnight the check to, name, Nadine J. Wade, address: 244 East
19 161st Street, the Bronx, New York.

20 A. Did not mean to send yet. My finger slipped. Yes, I
21 normally eat two meals a day. If I am somewhere that has
22 amazing breakfast specials, I will eat breakfast. I have all
23 that. I will let you know. I am trusting you and showing you
24 that I believe you.

25 Q. I don't eat lunch. Only breakfast and dinner. Thanks for

NC5sWAD4

Gutierrez - Direct

1 trusting me, and I promise I will not let you down. Send me a
2 picture of the cashier's check and FedEx receipt.

3 Thank you.

4 A. OK.

5 Q. Then there is a call, Hi, honey.

6 Another call. And scroll.

7 OK. And the next message is an incoming message of a
8 paragraph?

9 A. Yes.

10 Q. Let's zoom in on that.

11 Now, who is this sent to?

12 A. Nadine.

13 Q. This FedEx envelope?

14 A. Nadine J. Wade.

15 Q. And that's the same address we have been looking at, the
16 Walgreens?

17 A. Yes.

18 Q. And in the top left, are you able to see a name of the
19 sender?

20 A. Yes. It's Chris Eldredge, Augusta Cleaners and Formals.

21 Q. And can you see the city and the state that's listed in the
22 address?

23 A. It says Waynesboro, Virginia.

24 Q. That's on the front of this FedEx envelope to Nadine J.
25 Wade, right?

NC5sWAD4

Gutierrez - Direct

1 A. Yes.

2 MR. FERGENSON: All right. Let's zoom out, please.

3 Thank you, Ms. Foote. Let's scroll down.

4 OK. Let's zoom on the next photograph. .

5 Q. OK. Now, Ms. Gutierrez, is this a cashier's check?

6 A. Yes.

7 Q. And what's the date?

8 A. May 26, 2020.

9 Q. In what amount?

10 A. It's \$15,000.

11 Q. And now, Ms. Gutierrez, is there a remitter name listed on
12 this check?

13 A. No.

14 Q. In the top left, are you able to see which bank or
15 financial institution issued this cashier's check?

16 A. Yes. It's DuPont Community Credit Union.

17 Q. And what's the city and state in the address listed beneath
18 that?

19 A. Waynesboro, Virginia.

20 Q. And who is this check, this \$15,000 cashier's check from
21 DuPont Community Credit Union, in Waynesboro, Virginia, payable
22 to?

23 A. Royal Treasure Chest, LLC.

24 Q. And, Ms. Gutierrez, I want to focus you on the text beneath
25 Royal Treasure Chest, LLC.

NC5sWAD4

Gutierrez - Direct

1 What does it say after the letters RE colon?

2 A. Blowout prevent.

3 MS. McLEOD: Ms. Foote, let's go to -- let's zoom out
4 and if we could briefly scroll back up to the FedEx.

5 Just zoom.

6 Q. Actually, if you can read it, Ms. Gutierrez, what are the
7 last four of that FedEx tracking number?

8 A. 8022.

9 Q. Let's scroll to the FedEx record, Ms. Foote, please.

10 What are the last four of this tracking number,
11 Ms. Gutierrez?

12 A. It's the same, 8022.

13 Q. Now, I'm not going to go through row by row again, but who
14 signed for this FedEx envelope with the check that says blowout
15 prevent?

16 A. Nadine Wade.

17 MR. FERGENSON: Ms. Foote, let's please go to
18 Government Exhibit 913.

19 Q. Same name in the top left, Ms. Gutierrez?

20 A. Yes.

21 Q. And what's the date?

22 A. May 30, 2020.

23 Q. So that's just four days after the text we were just
24 looking at?

25 A. Yes.

NC5sWAD4

Gutierrez - Direct

1 Q. OK. I'll read the blue and you can read the white, if
2 there are any.

3 So there is a call and then the outgoing texts say:

4 I am sorry if I hurt you or upset you. I apologize.

5 I am sending the information again. You will issue
6 the cashier's check with the name below. Pay to: Royal
7 Treasure Chest, LLC. Then you will drive to FedEx and
8 overnight the check to name: Nadine J. Wade. Address: 244
9 East 161st Street, The Bronx, New York.

10 Thank you.

11 And then there is an incoming photo, right,
12 Ms. Gutierrez?

13 A. Yes.

14 Q. Let's zoom on that.

15 Now, I won't go over the same detail, but on the front
16 of this FedEx envelope it's addressed to Nadine Wade, correct?

17 A. Correct.

18 Q. At that same Walgreens in the Bronx, correct?

19 A. Correct.

20 Q. And in the top left, is there a sender information on the
21 front of this FedEx envelope?

22 A. Yes.

23 Q. And it says, Chris Eldredge, Augusta Cleaners and Formals,
24 correct?

25 A. Yes.

NC5sWAD4

Gutierrez - Direct

1 Q. And lists an address of Waynesboro, Virginia?

2 A. Yes.

3 Q. And, Ms. Gutierrez, what are the last four of the tracking
4 number?

5 A. 8158.

6 MR. FERGENSON: Let's zoom back out. Let's go to the
7 next page, please, Ms. Foote. Let's zoom on this check.

8 Q. OK. Ms. Gutierrez, this is another cashier's check, right?

9 A. Right.

10 Q. Also from DuPont Community Credit Union in Waynesboro,
11 Virginia?

12 A. Yes.

13 Q. And what's the date of this check?

14 A. May 30, 2020.

15 Q. How much was this check for?

16 A. \$35,000.

17 Q. And, again, who was this check made payable to?

18 A. Royal Treasure Chest, LLC.

19 Q. Beneath this check, what does it say after the RE colon
20 line?

21 A. Machinery.

22 MR. FERGENSON: All right. Let's zoom back out.
23 Let's scroll down.

24 Q. And, Ms. Gutierrez, I'm not going to scroll back up, but
25 this FedEx tracking number matches the FedEx envelope we just

NC5sWAD4

Gutierrez - Direct

1 looked at?

2 A. Yes.

3 Q. And I won't go through it again in detail, but who signed
4 for this FedEx envelope from Waynesboro, Virginia, four days
5 later?

6 A. N. Wade.

7 MR. FERGENSON: All right. Ms. Foote, let's go to
8 Government Exhibit 914.

9 Q. Same name in the top left?

10 A. Yes.

11 Q. What's the date?

12 A. June 8, 2020.

13 Q. So that's about a week later, right?

14 A. Right.

15 Q. OK. I will read the blue text and you please read the
16 white.

17 Pay to Royal Treasure Chest, LLC. 57K\$. Pay to
18 Honcho Ways, Inc., 68K\$. Mail to, name, Nadine J. Wade,
19 address, 244 East 161st Street, The Bronx, New York 10451.

20 A. Why two different companies?

21 Q. Honcho Ways, Inc., is under Royal Treasure. They own both
22 companies. They said you should split the payment between
23 their companies so the whole company can clear within 24 hours
24 and they will ship out the machine. Payment*.

25 A. I see. I guess. Just thought it would go to the same

NC5sWAD4

Gutierrez - Direct

1 place.

2 Q. And then there's a call and a second longer call.

3 A. Can both checks go in the same FedEx envelope?

4 Q. Yes.

5 A. Got it.

6 Q. There's another call.

7 Are you OK?

8 And then there's an incoming message, Ms. Gutierrez?

9 A. Yes.

10 Q. All right. Let's zoom on that photograph.

11 And the same shipper and sender information on the
12 front of this FedEx envelope, Ms. Gutierrez?

13 A. Yes.

14 Q. And, actually, do you even see, beneath Bronx, New York,
15 where it says RE colon?

16 What does it say after that?

17 A. C. Carter Arbaugh.

18 Q. That's on the front of this FedEx envelope to Nadine J.
19 Wade?

20 A. Yes.

21 MR. FERGENSON: Let's zoom back out. Let's scroll
22 down, please, Ms. Foote.

23 Q. Now, Ms. Gutierrez, after the FedEx envelope, there's
24 photos of two checks, right?

25 A. Right.

NC5sWAD4

Gutierrez - Direct

1 Q. Let's look at them one by one. Let's look at the top
2 check.

3 OK. So this is another cashier's check?

4 A. Yes.

5 Q. From the DuPont Community Credit Union?

6 A. Yes.

7 Q. And what's the date on this check?

8 A. June 8, 2020.

9 Q. And how much was this check?

10 A. \$57,000.

11 Q. Who was this check made payable to?

12 A. Royal Treasure Chest, LLC.

13 Q. And what beneath that, what does it say after RE colon?

14 A. Machinery.

15 Q. And, Ms. Gutierrez, this is about a week after the first
16 check that was re machinery, right?

17 A. Yes.

18 MR. FERGENSON: Let's zoom back out and let's look at
19 the second check.

20 Q. OK. Ms. Gutierrez, same date, right?

21 A. Yes.

22 Q. Cashier's check from DuPont Community Credit Union?

23 A. Yes.

24 Q. And how much was this check?

25 A. \$68,000.

NC5sWAD4

Gutierrez - Direct

1 Q. Now, who is this check made payable to?

2 A. Honcho Ways, Inc.

3 Q. And what was the re line underline that?

4 A. Machinery.

5 Q. OK. Let's zoom out and, just before we start reading
6 again, do you recall the text we just read where Ms. Arbaugh
7 asked if both checks could go in one envelope?

8 A. Yes.

9 Q. And the answer was yes, right?

10 A. Yes.

11 Q. OK. Let's continue reading and you'll have the first line.

12 A. I know you called. Did not want to talk while in FedEx.

13 Q. I see. I got the pictures.

14 MR. FERGENSON: OK. Let's scroll down, Ms. Foote.

15 Q. And thanks so much honey. I appreciate your help. I
16 program I will not let you down. I need to forward the
17 pictures and call the company. I will get back to you.

18 A. Please don't. I am sure I cannot handle anything else.

19 Q. Nothing else will go wrong. I promise you.

20 Let's keep scrolling down.

21 Now, I won't do it here, but have you previously
22 compared the tracking number here with the tracking number in
23 the photograph?

24 A. Yes.

25 Q. And are they the same?

NC5sWAD4

Gutierrez - Direct

1 A. Yes.

2 Q. And, Ms. Gutierrez, who signed for this FedEx envelope that
3 had the two checks inside of it?

4 A. N. Wade.

5 MR. FERGENSON: Now, Ms. Foote, let's now go to
6 Government Exhibit 915.

7 Q. Same name in the top left?

8 A. Yes.

9 Q. And what's the date?

10 A. June 10, 2020.

11 Q. So that's just two days later than the text we were just
12 looking at?

13 A. Yes.

14 Q. OK. I'll go ahead and read the blue.

15 Pay to Zeevaldor, Inc. \$26,560.

16 A. Got it.

17 Q. OK. And then there's a photo of the FedEx. Let's zoom on
18 that.

19 I won't spend a ton of time, but the same sender and
20 recipient info we've been looking at, correct?

21 A. Yes.

22 Q. And there's still a reference to C. Carter Arbaugh on there
23 as well, right?

24 A. Right.

25 MR. FERGENSON: OK. Let's zoom down. We can skip

NC5sWAD4

Gutierrez - Direct

1 over these texts. Let's just zoom on the check here.

2 Q. OK. Now, this is another cashier's check from DuPont
3 Community Credit Union, correct?

4 A. Correct.

5 Q. And what's the date?

6 A. June 10, 2020.

7 Q. Same date of the text?

8 A. Yes.

9 Q. What's the amount on this check?

10 A. \$26,560.

11 Q. And who was this one payable to?

12 A. Zeevaldor, Inc.

13 Q. And who is the re line on this \$26,560 check?

14 A. Machine shipping.

15 Q. OK. Let's zoom out. Let's scroll to the bottom.

16 Ms. Gutierrez, does the FedEx tracking number on this
17 record match the one in the photograph from Ms. Arbaugh?

18 A. Yes.

19 Q. And who signed two days later for this FedEx envelope with
20 a check to Zeevaldor, Inc.?

21 A. Nadine Wade.

22 Q. Now we can take that down.

23 Ms. Gutierrez, did you search the Google records for
24 additional text messages with Ms. Arbaugh after this date,
25 after the June 10 date?

NC5sWAD4

Gutierrez - Direct

1 A. Yes.

2 Q. And were there any in the three Google accounts described
3 in the stipulation?

4 A. No.

5 Q. All right. Let's transition to another individual.

6 Let's go to Judy Crain.

7 MR. FERGENSON: Ms. Foote, please pull up Government
8 Exhibit 941.

9 Q. Now, Ms. Gutierrez, what's the name in the top left here?

10 A. Judy Crain.

11 Q. What's the date?

12 A. April 15, 2020.

13 Q. And this is just a message from Ms. Crain, correct?

14 A. Correct.

15 Q. And what does she say?

16 A. These two are my favorites.

17 MR. FERGENSON: And, Ms. Foote, if we can zoom on the
18 photos.

19 Q. OK. Let's go to Government Exhibit 942.

20 And, again, this is still Ms. Crain, Ms. Gutierrez?

21 A. Yes.

22 Q. What's the date?

23 A. April 19, 2020.

24 Q. So just a few days later?

25 A. Just a few days later.

NC5sWAD4

Gutierrez - Direct

1 Q. And what does this message say?

2 You can zoom on it.

3 A. This is my favorite now. And then there's a photo.

4 Q. Let's now go to Government Exhibit 943, please.

5 OK. Now, this is the next day on April 19 these
6 start, correct?

7 A. Yes.

8 Q. OK. Let's zoom on the messages. I'll read the blue, you,
9 please, read the white.

10 We got a lot done today, but the blowout preventer was
11 giving us problem.

12 A. Does that mean a delay in getting the job completed?

13 Q. Not at all.

14 A. OK. That's good. What is a blowout preventer? You don't
15 have to answer. You can tell me when we meet.

16 Q. A blowout preventer is a specialized valve used to seal,
17 control, and monitor oil and gas wells to prevent blowouts.

18 A. Oh.

19 Q. So blowout preventer allows us to weld under the water.

20 A. Do you have a backup?

21 Q. I am sure it will work better tomorrow?

22 A. Hope so.

23 Q. I guess the machine needs to cool down. Send me your
24 e-mail. I want to send you a video of me welding under the
25 water. I told one of my crew to video me so I can share with

NC5sWAD4

Gutierrez - Direct

1 you.

2 A. JudyColleenCrain@gmail.com.

3 MR. FERGENSON: And let's pull up, Ms. Foote,
4 Government Exhibit 1012.

5 (Video played)

6 Thank you, Ms. Foote.

7 Let's go back to Government Exhibit 943.

8 BY MR. FERGENSON:

9 Q. Let's start again, Ms. Gutierrez, on April 20.

10 OK. So this is the following morning.

11 Good morning, sweetie. We have a problem on the rig.

12 I will text you soon. I hope you slept well.

13 A. Oh, no.

14 Q. Can you talk on Skype?

15 A. Yes.

16 Q. Let me know when you are online on Skype.

17 A. I am on.

18 Q. Then there is three calls.

19 A. Where is this Royal Treasure Chest, LLC website?

20 Q. Check your Skype. Everything I told you about me is true.

21 I have no reason to lie to you. I have a reputation to keep so
22 stop thinking I'm here to hurt you. I will pay you back I
23 promise.

24 A. OK.

25 Q. Then there is a call.

NC5sWAD4

Gutierrez - Direct

1 Hi, honey.

2 Two more calls.

3 Are you OK?

4 There's another call.

5 Is there any reason why you are not picking my calls?

6 I am not here to take advantage of you. I know right now we
7 are facing the difficulty of building each other's trust. I
8 understand your fears and worries about the undone project
9 here, and I know you cannot wait to meet me in person. I also
10 cannot wait, as I have thoughts of us cuddling all night,
11 sleeping and waking to each other's smiling face and doing all
12 the beautiful things we wish to do together. But, I must tell
13 you, honey, it's not always a bed of roses in a relationship.
14 There comes the ups and downtimes. I believe that we are
15 facing our hard times, and if we stay strong, we will scale
16 through and the light is just there at the end of the tunnel.

17 You don't have to ignore me. If you don't want to do
18 this. Just tell me.

19 Then there's a call.

20 And then the next incoming message says what,

21 Mr. Gutierrez?

22 A. It is done.

23 Q. Then there is three photographs sent?

24 A. Yes.

25 MR. FERGENSON: And let's look at the check, first,

NC5sWAD4

Gutierrez - Direct

1 please, Ms. Foote.

2 Q. OK. Now, Ms. Gutierrez, is this another cashier's check?

3 A. Yes.

4 Q. What's the date of this cashier's check?

5 A. April 20, 2020.

6 Q. What's the amount?

7 A. \$15,000.

8 Q. And is there a remitter listed on this cashier's check?

9 A. Yes.

10 Q. Who is the remitter?

11 A. Judy Colleen Crain.

12 Q. That's on the face of this cashier's check?

13 A. Yes.

14 Q. Who is this \$15,000 cashier's check from Judy Colleen Crain
15 made payable to?

16 A. Royal Treasure Chest, LLC.

17 MR. FERGENSON: Let's zoom out, please. Let's look at
18 the FedEx envelope.

19 Q. OK. Now, who is this FedEx envelope addressed to?

20 A. Attention: Nadine J. Wade, Royal Treasure Chest, LLC.

21 Q. And, Ms. Gutierrez, in the top left on the face of this
22 FedEx envelope, is the sender's information listed?

23 A. Yes, it is.

24 Q. What's the name listed?

25 A. Judy Crain.

NC5sWAD4

Gutierrez - Direct

1 Q. And are you able to read the city and the state?

2 A. It says New Orleans, Louisiana.

3 Q. OK. Let's zoom out.

4 OK. Let's continue reading. I'll read the blue.

5 Thank you.

6 I promise I will pay you back.

7 Text me when you get home.

8 A. OK. Just know this. I just gave you everything I have to
9 give you from here.

10 Q. I will not let you down I promise you sweetie. Text me
11 when you get back home.

12 A. OK. I'm home.

13 Q. I am glad you got home safely. Sorry for the stress. You
14 have nothing to worry about OK. I will pay. Have you eating?

15 A. I just ate for the first time today. I went to do.

16 Q. Thank you. Are you going to lunch now.

17 I'm sorry.

18 A. That was me.

19 THE COURT: Let's try that again. I'll let you read
20 that, please.

21 A. Are you going to lunch now?

22 Q. I forward both pictures to the company via e-mail.

23 A. OK.

24 Q. And let's scroll down.

25 Now, did you previously compare the tracking number on

NC5sWAD4

Gutierrez - Direct

1 this FedEx tracker with the one in the photograph?

2 A. Yes.

3 Q. Are they the same?

4 A. Yes.

5 Q. Who signed for this envelope with a cashier's check from
6 Judy Crain in New Orleans?

7 A. N. Wade.

8 MR. FERGENSON: All right. Ms. Foote, let's go to
9 Government Exhibit 944.

10 Q. All right. Now, what's the name in the top left?

11 A. It's the same, Judy Crain.

12 Q. And this is just two days later, right?

13 A. Right.

14 Q. It's April 22, 2020?

15 A. Yes.

16 Q. OK. I'll read the blue, you can read the white.

17 Hi sweetie.

18 A. Hi.

19 Q. Can you talk on Skype?

20 A. Yes.

21 Q. OK. Come online.

22 Then there is a long call.

23 Name, Royal Treasure Chest, LLC. You will overnight
24 to the address below. Mail to, name, Nadine J. Wade. Address,
25 244 East 161st Street, the Bronx, New York, 10451.

NC5sWAD4

Gutierrez - Direct

1 A. I can't get it. So sorry. All I can get is ten.

2 Q. OK. If you can send 10K, I will see if I can talk the
3 company into accept 25K now, and I can send the balance when I
4 get off the rig.

5 Then there's three calls.

6 Honey.

7 A. At FedEx.

8 Q. OK.

9 Let's scroll.

10 Then there's three photos sent to the Google account,
11 correct?

12 A. Correct.

13 MR. FERGENSON: Let's look at the check first. Thank
14 you, Ms. Foote.

15 Q. Now, again, what's the amount of this check?

16 A. \$14,500.

17 Q. And is the remitter listed on the face of the check?

18 A. Yes.

19 Q. What's the remitter as name?

20 A. Judy Colleen Crain.

21 Q. And who is this \$14,500 cashier's check from Judy Colleen
22 Crain made payable to?

23 A. Royal Treasure Chest, LLC.

24 MR. FERGENSON: OK. Let's zoom out, please. Let's
25 zoom on the FedEx envelope.

NC5sWAD4

Gutierrez - Direct

1 Q. Who is the FedEx envelope addressed to?

2 A. Royal Treasure Chest, LLC, attention, Nadine J. Wade.

3 Q. And it's a bit blurry, but are you able to see in the top
4 left the name of the sender?

5 A. Yeah. It's Judy Colleen Crain.

6 Q. Let's zoom back out.

7 OK. Actually, Ms. Gutierrez, you have the next lines
8 to finish reading.

9 A. Check will get there at 8:30 a.m. tomorrow.

10 Q. Got it sweetie. Thank you. I will forward the pictures
11 and call the company. Text me when you get home. Drive safe.

12 A. I will drive safe on my bike. My son's bike.

13 Q. OK.

14 A. Home.

15 Q. Let's keep scrolling down.

16 Now, Ms. Gutierrez, is the tracking number on this
17 FedEx record the same as the one in the photo?

18 A. Yes.

19 Q. And who picked up this FedEx envelope from Judy Colleen
20 Crain with a cashier's check from Judy Colleen Crain?

21 A. It was signed for by N. Wade.

22 MR. FERGENSON: All right. Now, Ms. Foote, let's go
23 to another individual.

24 Let's look at Patsy Stanley.

25 THE COURT: Counsel, may I inquire, just because we're

NC5sWAD4

Gutierrez - Direct

1 getting near the luncheon time, about how much more direct exam
2 you have.

3 MR. FERGENSON: Your Honor, I have -- I may be close
4 to halfway.

5 THE COURT: You're halfway.

6 OK. Then I think now it makes, if it's all right with
7 you all, and the answer is it will be, let's take the break for
8 lunch right now. Because you're halfway through and I don't
9 know when else we could break, you know, that wouldn't get
10 close enough to lunch.

11 We'll take our lunch break. It's going to be 45
12 minutes, and you'll come back to the jury room. And then when
13 you're all together 45 minutes later, we'll come back in here.

14 I will ask you, as I ask you at each break, not to
15 discuss this case with each other or with anyone else, and to
16 keep an open mind until all of the evidence is in, and to enjoy
17 your lunches.

18 Thank you all very much.

19 (Continued on next page)
20
21
22
23
24
25

NC5sWAD4

Gutierrez - Direct

(Jury not present)

THE COURT: Counsel, I'm just standing for my back.

Is there anything for us to discuss at this time?

MR. FERGENSON: Not from the government.

No, your Honor.

MR. SOLOWAY: No.

THE COURT: Saying nothing, I'll see you all in
45 minutes.

Thank you, Ms. Gutierrez, as well.

(Luncheon recess)

NC5Gwad5

Gutierrez - Direct

AFTERNOON SESSION

1:30 p.m.

(In open court; jury present)

THE COURT: Mr. Fergenson, you may continue with your examination.

MR. FERGENSON: Thank you, your Honor.

Ms. Foote, could you please publish Government Exhibit 991.

BY MR. FERGENSON:

Q. Ms. Gutierrez, what's the name in the top left of this summary text exhibit?

A. Patsye Stanley.

Q. What's the date here?

A. March 14th, 2020.

Q. And this isn't an individual we've looked at before, this is a new one; right?

A. This is a new person.

Q. I'll read the first text there is dated March 3rd, 2020. And so I'll read that, and then I'll continue on with the March 14th texts.

Hi, Patsye. This is Diego from OurTime.

Then there's a break. And we go to March 14th. Hi, sweetie. Good morning. I have been awake for a while checking the blowout preventer before we start working today. Text me when you are done.

NC5Gwad5

Gutierrez - Direct

1 A. I decided it is a bit cold, my heat was turned down, I
2 still have a jacket on. How is work today? The problem
3 better.

4 Q. Can you talk on Skype?

5 A. Sure.

6 Q. Okay. I left you a message on Skype.

7 There's another call.

8 I'm flying into St. Louis Lambert International
9 Airport; right? I want to purchase my flight ticket so I can
10 forward my itinerary to you. But I need to be sure if I'm
11 flying into STL.

12 There's a call.

13 Longer call.

14 What is sent by Ms. Stanley?

15 A. A picture of a check.

16 MR. FERGENSON: Let's zoom in on that.

17 Q. Now, Ms. Gutierrez, how much is this check for?

18 A. \$15,000.

19 Q. And is there a remitter listed on the face of this check?

20 A. Yes.

21 Q. Who is the remitter?

22 A. Patsye A. Stanley.

23 Q. And who is this \$15,000 check made payable to?

24 A. Royal Treasure Chest LLC.

25 MR. FERGENSON: Zoom out, scroll down, please,

NC5Gwad5

Gutierrez - Direct

1 Ms. Foote.

2 Let's zoom in on the FedEx package, please.

3 Q. Who is this FedEx package addressed to, Ms. Gutierrez?

4 A. Nadine J Wade.

5 Q. And then right above that, focusing you on the top left,
6 what name is listed on the face of this FedEx envelope to
7 Nadine Wade?

8 A. Patsye Stanley.

9 Q. And is there an address with a city and state listed?

10 A. Yes.

11 Q. What is the city and state?

12 A. St. Charles, Missouri.

13 MR. FERGENSON: Let's zoom out and let's scroll down.

14 Q. And then there's also a picture of a FedEx receipt.

15 Do you see that?

16 A. Yes.

17 MR. FERGENSON: Let's scroll down.

18 Q. Ms. Gutierrez, does this FedEx record's tracking number
19 match the tracking number on the envelope we just looked at?

20 A. Yes.

21 Q. Who signed for this package for a cashier's check?

22 A. N Wade.

23 MR. FERGENSON: Let's go to another individual.

24 Ms. Foote, let's pull up Government Exhibit 981.

25 Q. What's the name in the top left of this?

NC5Gwad5

Gutierrez - Direct

1 A. Maria Milanya.

2 Q. What's the date?

3 A. March 21st, 2020.

4 Q. I'll read the blue and you read the white.

5 Hi, Maria. This is Diego from Marriage Minded.

6 A. Hi, Diego. You are a fast operator.

7 Q. Smiley face. This is much faster.

8 A. Yes, it is.

9 Q. Tell me more about you. How long have you been single and
10 how many kids do you have?

11 A. My husband was ill for a very long time. Technically, I
12 alone more and a half year. We did not have kids. We want to.
13 I had two surgeries but it never happened. Do you have kids?

14 Q. I have a son, Alberto -- I'm not going to continue.

15 You continue.

16 A. Last 20 years when my husband was still alive, we went
17 every summer for two to three months, we used to have house on
18 a long island in Croatia and we live on Long Island in New
19 York, what a coincidence. I'm sorry for your loss. My husband
20 died from cancer.

21 Q. Sorry for your loss. I'm family oriented. I communicate
22 with my mom and my son every day. They are the love of my
23 life.

24 MR. FERGENSON: Ms. Foote, let's go to Government
25 Exhibit 982.

NC5Gwad5

Gutierrez - Direct

1 Q. What's the name in the top left?

2 A. It's again Maria Milanya.

3 Q. What's the date here?

4 A. March 20th, 2020.

5 Q. So a little over a week later?

6 A. Yes.

7 Q. I'll read the blue and you read the white.

8 Good morning. I will text you shortly. The blowout
9 preventer does not seems to be working. So we are checking
10 out. Be right back. Are you there?

11 A. I'm here. Everything okay.

12 Q. No, sweetie. Can you talk on Skype.

13 Then there's three calls.

14 If you cannot trust me I see no reason why we should
15 continue this. Thanks for hurting me. God bless you.

16 There's a call.

17 Are you there?

18 Three more calls.

19 Here is the TD Bank bank address, 1601 West Boynton
20 Beach Boulevard, Boynton Beach, Florida, name Nadine Jazmine
21 Wade, bank name TD Bank, account number 4363680129 checking
22 account address 155 Canal Street, New York, New York 10013.

23 MR. FERGENSON: Then scroll.

24 Q. Then there's a call and an MMS -- do you see there's an
25 outgoing message that says MMS sent?

NC5Gwad5

Gutierrez - Direct

1 A. Yes.

2 Q. Now, based on your review of the records, if the Google
3 account sent an attachment to someone, was that attachment
4 located in the Google records you reviewed?

5 A. No.

6 Q. So there's the -- I'll continue reading. There's an MMS
7 sent message.

8 And then, here is the invoice I got from the company.
9 They want the payment to through their agent because he is the
10 one processing me sales at the company.

11 Then there's a call.

12 And then an address 578 East Woolbright Road, 501
13 Boynton Beach, Florida 33435.

14 Three more calls.

15 Just tell them you want to deposit into the account.
16 You don't have to go into details. That's all. Send me a copy
17 of the receipt when you are done.

18 Three more calls.

19 And then, what's the next message?

20 A. I left you a message on Skype.

21 MR. FERGENSON: Let's zoom in on that.

22 Q. Ms. Gutierrez, are you able to read from left to right
23 what's on this record?

24 A. Yes. It's 11:53 a.m., March 30th, 2020, asterisk 0129 CK
25 DEP, \$5,000, number 44.

NC5Gwad5

Gutierrez - Direct

1 Q. And those numbers, 0129, are those the same last four
2 numbers of the account number that was sent to Ms. Milanya?

3 A. Yes.

4 Q. Ms. Gutierrez, in the bottom left, what does it say on this
5 piece of paper?

6 A. TD Bank.

7 MR. FERGENSON: Let's zoom back out.

8 Q. I'll continue reading in blue.

9 There's three calls.

10 And then, I spoke with the company and they said you
11 could sent the other 5K through money orders. So you can drive
12 to post office or Western Union to buy a money order for 5K,
13 then you will take pictures of money orders and send it to me,
14 then you will put the money orders inside the envelope and
15 drive to FedEx in 2208 North Congress Avenue, Boynton Beach,
16 Florida 33426 to overnight the money orders to them.

17 Tell FedEx to overnight David Buma, address 32 Holland
18 Street, Newark, New Jersey 07103.

19 MR. FERGENSON: Let's scroll down. And then there are
20 receipts that are sent.

21 Q. Ms. Gutierrez, unlike the other records we have been
22 looking at, was that mailing address addressed to Nadine Wade's
23 attention?

24 A. No.

25 Q. So did you incorporate a FedEx record for any shipment in

NC5Gwad5

Gutierrez - Direct

1 this summary?

2 A. I did not.

3 MR. FERGENSON: Let's scroll down. Ms. Foote, could
4 you zoom in on the money orders. We can just scroll down some
5 more. Thank you.

6 Now, let's go to Government Exhibit 984.

7 Q. What's the name in the top left?

8 A. Maria Milanya.

9 Q. Same person?

10 A. Same person.

11 Q. And the date?

12 A. April 10th, 2020.

13 Q. So about 10 or 11 days later?

14 A. Right.

15 Q. I'm going to read the blue. You read the white.

16 Honey, we have a problem. There is an explosion on
17 the rig this morning. Come on Skype.

18 There's a call.

19 Are you there?

20 A. I'm here, tell me.

21 Q. Come on Skype.

22 There's two calls.

23 Account name, Nadine Jazmine Wade, bank name, TD Bank,
24 account number ending 0129, checking account address 155 Canal
25 Street.

NC5Gwad5

Gutierrez - Direct

1 And then there's two calls and a photograph; right,
2 Ms. Gutierrez?

3 A. Right.

4 MR. FERGENSON: Ms. Foote, could you zoom on that.

5 Q. Ms. Gutierrez, do you see the asterisk 0129?

6 A. Yes.

7 MR. FERGENSON: Ms. Foote, let's zoom out and scroll
8 down. And this looks like a bigger photograph, maybe we can
9 zoom on that.

10 Q. Could you read the amount shown on the right,
11 Ms. Gutierrez?

12 A. It's \$12,014.52.

13 MR. FERGENSON: Let's zoom back out and continue
14 scrolling down. We can keep going.

15 Let's go to the next one, Ms. Foote. Let's go to
16 Government Exhibit 985.

17 Q. What's the name in the top left?

18 A. Maria Milanya.

19 Q. What's the date?

20 A. April 16th, 2020.

21 Q. And that's six days later?

22 A. Right.

23 Q. You read the white. I'll read the blue.

24 A. I call my bank, already left the message.

25 Q. Honey, your bank is open. We don't have to wait for your

NC5Gwad5

Gutierrez - Direct

1 banker. This is your bank address, right, address 5000 West
2 Boynton Beach Boulevard, Boynton Beach, Florida 43436. Just
3 listen to me this time, okay?

4 A. Okay. He probably will call. If he don't 9:00 o'clock,
5 I'm living and wait when bank open 9:30, it be line outside any
6 way.

7 Q. Okay.

8 A. I listen to you my kimo sabe.

9 Q. Thank you mio amore. I will tell you what you have to do
10 now.

11 A. All me that all my life with mio amore.

12 You have details right.

13 Q. Your bank will issue you a cashiers check of \$50,000 with
14 the company name Honcho Ways Inc. So when you go to the bank
15 this morning you will issue a check of 50k, then you will
16 overnight it to New Jersey. They want you to send the rest of
17 the 23K through TD Bank. So once you finish with the first
18 part, I will tell you how to address the other 23k. But first,
19 you need to issue the 50kcheck and overnight it to New Jersey.
20 Capisci?

21 A. 50k to David Bums.

22 Q. David Buma, address 32 Holland Street, Newark, New Jersey.
23 You will overnight it to the info above, yes?

24 A. 23k probably in cash.

25 Q. No. You will -- once you overnight it to David Buma, then

NC5Gwad5

Gutierrez - Direct

1 let me know and I will tell you how to capisci?

2 A. I'm not going twice in bank so tell me second part. I have
3 to pick up car today I have loaner when that call I can let
4 them know, capito.

5 Q. Here is the second part. You will issue another cashier's
6 check of 23K with Royal Treasure Chest LLC, then you will drive
7 to TD Bank and deposit the check in the account below. Account
8 name Royal Treasure Chest LLC, account number 4367711201 at
9 155 Canal Street, New York, New York 10013, business account
10 TD Bank, capisci.

11 A. So it is check to the TD Bank, capito amore mio.

12 Q. So when you go to the bank, you will issue two cashier's
13 check, one for 50K and one for 23K. 50 K to Honcho Ways and
14 23K to Royal Treasure Chest LLC. You will overnight the 50K
15 check to New Jersey and you will deposit the 23K to TD Bank.
16 Tell me if you understand Royal Treasure Chest LLC.

17 And I'll skip over the last one.

18 There's a call.

19 MR. FERGENSON: Can you scroll down. So let's zoom
20 first on the check.

21 Q. So this is a cashier's check, Ms. Gutierrez?

22 A. Yes.

23 Q. For how much?

24 A. \$50,000.

25 Q. And who is it payable to?

NC5Gwad5

Gutierrez - Direct

1 A. Honcho Way, Inc.

2 MR. FERGENSON: Let's zoom back out.

3 And then let's zoom on the first image.

4 Q. Now, this is one of the pieces of paper, it says TD Bank in
5 the bottom left. Can you read the text towards the top?

6 A. 10:33 a.m., 4/16/20, asterisk 1201, COMMER DEP \$23,000.

7 MR. FERGENSON: Let's go to Government Exhibit 986,
8 Ms. Foote.

9 Q. What's the name in the top left?

10 A. Maria Milanya.

11 Q. Same person?

12 A. Right.

13 Q. What's the date?

14 A. April 22nd, 2020.

15 Q. So six days after the messages we were just looking at?

16 A. Yes.

17 Q. You go ahead and read the white, and I'll read the blue.

18 A. Diego, you sure to send the all in check form I prepare
19 paperwork call my credit card, they increase me 300, it help.

20 Q. That's good. So now your cash advance limit is 3,800;
21 right?

22 A. Sorry to broke the mood, but I want to be sure tonight what
23 I doing tomorrow.

24 Q. Yes. You can send one cashier's check of 22K. You will
25 issue the check with Royal Treasure Chest LLC. Then you will

NC5Gwad5

Gutierrez - Direct

1 drive to TD Bank and deposit in the account I sent earlier.

2 That's okay.

3 A. That what I thought, but better double check with you.

4 MR. FERGENSON: Scroll down.

5 THE WITNESS: I hope now when you retire you give
6 yourself a break and loosen up and not demand.

7 MR. FERGENSON: Let's zoom in on the check.

8 BY MR. FERGENSON:

9 Q. Ms. Gutierrez, how much is this cashier's check for?

10 A. \$22,000.

11 Q. What is the date?

12 A. April 22nd, 2020.

13 Q. What's the remitter name on the face of the check?

14 A. Maria Milanya.

15 Q. And who is this \$22,000 cashier's check from Maria Milanya
16 payable to?

17 A. Royal Treasure Chest LLC.

18 MR. FERGENSON: Zoom out. And let's just go ahead and
19 scroll down and let's zoom on the photo.

20 Q. Ms. Gutierrez, do you see this says asterisk 1201 on it?

21 A. Yes.

22 Q. And what's the dollar amount on the right?

23 A. \$22,000.

24 MR. FERGENSON: Let's go to another individual,
25 Ms. Foote. Can we please pull up Government Exhibit 951.

NC5Gwad5

Gutierrez - Direct

1 Q. What's the name in the top left?

2 A. Patsy Kwitkin.

3 Q. What's the date on the top?

4 A. July 19, 2019.

5 Q. I'll read the blue.

6 Hi, Patsy, is Richard from Marriage Minded.

7 A. Great. That is a lot better. We are told not to share
8 info due to stalkers, but trust is part of establishing
9 relationship.

10 Q. That's right. And if we wish to meet someone we have to be
11 able to communicate always because communication is the key to
12 every successful relationship.

13 A. I lived in Palm Aire for 12 years, but condo living was not
14 for me. Condocommando were overwhelming to me.

15 Q. I live in a condo. How long have you been single and how
16 many kids do you have?

17 A. Of course, right on the beach? Single for four and a half
18 years but not be choose. I have one daughter who is married
19 with a great man and one grandson. And you? My grammar is
20 horrible. I do know better.

21 Q. I have a son, Alberto, who is 28 years -- and I won't
22 continue to read on.

23 MR. FERGENSON: Let's pull up Government Exhibit 959.

24 Q. Same person in the top left?

25 A. Yes.

NC5Gwad5

Gutierrez - Direct

1 Q. Patsy Kwitkin?

2 A. Yes.

3 Q. What is the date?

4 A. October 2nd, 2019.

5 Q. And I'll go ahead and read the blue.

6 Pay to Royal Treasure Chest LLC, mailing info name
7 Nadine J Wade, address 244 East 161st Street, the Bronx, New
8 York 10451. You got it.

9 A. Got it will leave shortly. Thanks lovie. You plan on
10 flying out tomorrow, right?

11 Q. Once they receive the cashier's check tomorrow, they will
12 purchase a money order of 10K each and mail to their howls.

13 Yes, lovie, I'm leaving the rig tomorrow morning. Mr. Miller
14 will pick me up between 9 and 10:00 a.m.

15 A. Great. I have to run some errands this afternoon.

16 Q. Ms. Gutierrez, how much is this check for?

17 A. \$30,000.

18 Q. What's the date on the check?

19 A. October 2nd, 2019.

20 Q. Is there a remitter listed on this check?

21 A. No, there's not.

22 Q. In the top left, what's the financial institution that sent
23 it?

24 A. Space Coast Credit Union.

25 Q. How much is this \$30,000 check from Space Coast Credit

NC5Gwad5

Gutierrez - Direct

1 Union -- who is it payable to, excuse me?

2 A. Royal Treasure Chest LLC.

3 Q. Thank you.

4 MR. FERGENSON: Let's scroll to the next page, please.

5 Q. Now, there is a FedEx receipt?

6 A. Yes.

7 MR. FERGENSON: Let's zoom in on that, please.

8 Q. On the receipt, what's the recipient address?

9 A. The address or who it is made out to?

10 Q. Well, let's start with the name.

11 A. It's addressed to Nadine Wade, Royal Treasure Chest LLC.

12 Q. And it's the Bronx Walgreens address we have been looking
13 at?

14 A. Yes.

15 Q. In the top right, do you see another address?

16 A. Yes.

17 Q. What is the city and state that address is from?

18 A. Coral Springs, Florida.

19 Q. Let's zoom back out and let's scroll down.

20 Does the tracking number for this FedEx number match
21 the receipt we just looked at?

22 A. Yes.

23 Q. Who signed for this check from Patsy Kwitkin?

24 A. N Wayne.

25 MR. FERGENSON: Let's go to Government Exhibit 960,

NC5Gwad5

Gutierrez - Direct

1 please, Ms. Foote.

2 Q. What's the name in the top left?

3 A. Patsy Kwitkin.

4 Q. Same person?

5 A. Yes.

6 Q. What is the date?

7 A. October 9th, 2019.

8 Q. So that's one week later?

9 A. Yes.

10 Q. You go ahead and read the white.

11 A. Let me check will be right back CL my night was not okay.

12 It is a go. The money is in. The amount I need to send is

13 39,100, correct. Let me check Skype.

14 Q. 39,218.

15 A. Where did I get the other amount. Should I just make it

16 39,500 to make sure.

17 Q. Yes, you can send 39,500.

18 A. You and I cannot take anymore. Please let the amount be

19 correct.

20 Q. The amount is correct.

21 A. Okay. Well let me get up, get showered and I will eat,

22 take care of Bennie, and I will be on my way.

23 Q. Okay, baby. Love you more.

24 A. I have info. Cashier's check to Royal Treasure Chest

25 mailed to Ms. Wade in the Bronx, New York, FedEx a.m. delivery,

NC5Gwad5

Gutierrez - Direct

1 a.m. next day by 10:30 a.m. if possible.

2 Q. Pay to Royal Treasure Chest LLC, mailing info, name
3 Nadine J Wade, address 244 East 161st Street, the Bronx, New
4 York, correct?

5 A. Got it love.

6 Q. Love you.

7 A. On my way. Just finished with bank. All okay.

8 Q. Yes. All okay. Send me copy of FedEx receipt and
9 cashier's check when you are done. Drive safe.

10 A. Of course. Okay babe. See if okay.

11 MR. FERGENSON: Let's zoom on the check.

12 Q. What's the date on this teller check?

13 A. October 9th, 2019.

14 Q. What's the amount?

15 A. 39,500.

16 Q. And is this from Space Coast Credit Union again?

17 A. Yes.

18 Q. And this is a week after the \$30,000 check we just looked
19 at earlier?

20 A. Yes.

21 Q. Who is this 39,500 check made payable to?

22 A. Royal Treasure Chest LLC.

23 MR. FERGENSON: Let's scroll. You can scroll down,
24 please. There's a FedEx receipt. Can we zoom on that.

25 Q. Again, who is this FedEx addressed to?

NC5Gwad5

Gutierrez - Direct

1 A. Nadine J Wade, Royal Treasure Chest LLC.

2 Q. And that's the same Bronx Walgreens address we have been
3 looking at?

4 A. Yes.

5 Q. And in the top right, do you see Coral Springs, Florida?

6 A. Yes.

7 MR. FERGENSON: Let's zoom out, and let's scroll down
8 to FedEx record.

9 Q. Does this FedEx record's tracking number match the tracking
10 number on the photo of the receipt?

11 A. Yes.

12 Q. And who signed for this \$39,500 check from Patsy Kwitkin?

13 A. N Wade.

14 MR. FERGENSON: Now, Ms. Foote, let's go to Government
15 Exhibit 961, please.

16 Q. Is this also Patsy Kwitkin?

17 A. Yes.

18 Q. What is the date?

19 A. October 17th, 2019.

20 Q. So this is eight days later?

21 A. Yes.

22 Q. I'll read the blue.

23 Are you there?

24 A. Yes, babe, okay.

25 Q. They said you will send the check to their branch in

NC5Gwad5

Gutierrez - Direct

1 Florida, so that's good.

2 A. And address.

3 Q. FedEx will deliver faster.

4 A. Do you think.

5 Q. Yes, since it is Florida to Florida?

6 A. Pay to Royal Treasure Chest LLC, mailing address Nadine J
7 Wade, address 8265 Championsgate Boulevard, Championsgate,
8 Florida 33896.

9 Question, are these women related. I got it, rush
10 deliver.

11 Q. She is one of the agent working in financial company.

12 And then there's a break.

13 The financial company said, since you are in Florida,
14 you should send it to their branch there because I told them I
15 want their office to deliver the money in London tomorrow. So
16 they said you should send the check to their branch in Florida
17 so they can deliver faster.

18 A. I understand. Know I am pain in ass, but so anxious, need
19 you so.

20 Q. Everything will be all right. I assure.

21 A. I know, will leave by time 10:00 a.m.

22 Q. Okay.

23 A. Leaving now.

24 Q. Okay.

25 A. Off to FedEx.

NC5Gwad5

Gutierrez - Direct

1 Q. And there's a call.

2 And is there an incoming message with a photograph?

3 A. Yes.

4 MR. FERGENSON: Ms. Foote, let's zoom on that.

5 Q. Now, what is the date on this check?

6 A. October 17th, 2019.

7 Q. And what is the amount?

8 A. 55,000.

9 Q. And is this also from Space Coast Credit Union?

10 A. Yes.

11 Q. And who is this \$55,000 check made payable to?

12 A. Royal Treasure Chest LLC.

13 Q. And this is eight days after the 39 and a half thousand
14 dollar check?

15 A. Yes, I believe so.

16 MR. FERGENSON: Let's zoom back out and scroll down.

17 Q. Now, is there a photo of the FedEx receipt?

18 A. Yes.

19 MR. FERGENSON: Let's zoom on that.

20 Q. Now, what is the recipient address of this?

21 A. Well, it's addressed to Royal Treasure Chest LLC, care of
22 Nadine J Wade.

23 Q. And is this sent to the Bronx Walgreens?

24 A. No.

25 Q. What address is this sent to?

NC5Gwad5

Gutierrez - Direct

1 A. 8265 Championsgate Boulevard, Championsgate, Florida
2 33896.

3 MR. FERGENSON: Let's keep going down.

4 Q. And now is this the FedEx record that matches the tracking
5 number on the photo?

6 A. Yes.

7 Q. And who signed for this FedEx package sent to Florida?

8 A. N Wade.

9 MR. FERGENSON: Now, Ms. Foote, could you please
10 add --

11 Q. Again, this package was to 8265 Championsgate Boulevard;
12 correct?

13 A. Yes.

14 MR. FERGENSON: Could you pull up S2 on the left and
15 12 on the right.

16 I'll just read the stipulation on the left, which
17 says, Government Exhibit 12 is a true and accurate image of the
18 following address: 8265 Championsgate Boulevard,
19 Championsgate, Florida.

20 Q. And Ms. Gutierrez, do you see Government Exhibit 12 on the
21 right?

22 A. I do.

23 MR. FERGENSON: Now, Ms. Foote, let's go to Government
24 Exhibit 962.

25 Q. This is Patsy Kwitkin, Ms. Gutierrez?

NC5Gwad5

Gutierrez - Direct

1 A. Yes.

2 Q. And the date?

3 A. December 11th, 2019.

4 Q. I'll read the blue.

5 Pay to Honcho Ways Inc.

6 A. Yes, that put Honcho Wats. Fixing now, just a few more
7 minutes.

8 Q. Okay.

9 A. Off to united parcel.

10 Q. Honey, send the cashier's check via FedEx.

11 A. Will do.

12 Q. Okay. Send me copy of the cashier's check.

13 A. Is that okay.

14 Q. No. Take a full picture of the cashier's check. Your
15 camera is too close to the check.

16 MR. FERGENSON: Scroll down.

17 A. How is this one.

18 Q. Perfect.

19 MR. FERGENSON: And we'll pause and we'll zoom
20 quickly.

21 Q. How much is this check for?

22 A. \$15,000.

23 Q. And who is it made payable to?

24 A. Honcho Ways Inc.

25 MR. FERGENSON: Let's zoom back out.

NC5Gwad5

Gutierrez - Direct

1 Q. And I should have asked, but is the remitter listed on that
2 check?

3 A. Yes.

4 Q. Who is the remitter?

5 A. Patsy Kwitkin.

6 MR. FERGENSON: Let's scroll down, Ms. Foote.

7 Q. Is there another FedEx receipt?

8 A. Yes.

9 MR. FERGENSON: Let's zoom in on that.

10 Q. Ms. Gutierrez, what's the recipient address listed on the
11 receipt?

12 A. Honcho Ways Inc., attention Nadine Wade.

13 Q. Is this sent to the Bronx Walgreens?

14 A. No.

15 Q. What is the address this is sent to?

16 A. 32 Holland Street, Newark, New Jersey 07103.

17 MR. FERGENSON: Ms. Foote, let's keep scrolling down.

18 Q. Is this the FedEx record for that receipt?

19 A. Yes.

20 Q. And who signed for this package?

21 A. Nobody.

22 Q. The signed for line is blank?

23 A. Yes.

24 Q. But this package was addressed to Nadine Wade's attention?

25 A. Yes, it was.

NC5Gwad5

Gutierrez - Direct

1 MR. FERGENSON: Ms. Foote, let's pull up on the left
2 Government exhibit S2 and on the right Government Exhibit 13.

3 So the stipulation says that Government Exhibit 13 is
4 a true and accurate image of the address 32 Holland Street,
5 Newark, New Jersey.

6 Ms. Foote, let's go to Government Exhibit 964.

7 Q. Ms. Gutierrez, still Patsy Kwitkin?

8 A. Yes.

9 Q. What's the date?

10 A. April 23rd, 2020.

11 Q. I'll read the first page. You start, please.

12 A. Okay, love. If you can give me the info on copter company,
13 will the exact amount they need.

14 Q. Your bank will issue the cashier's check with the name
15 below, Nadine Jazmine Wade. Then you will drive to TD Bank and
16 deposit the cashier's check in the account below. Account
17 name, Nadine Jazmine Wade, account number 4363680129, checking
18 account address, address, 155 Canal Street, New York, New York
19 10013, TD Bank.

20 A. Why.

21 Q. Take a picture of the cashier's check and send it to me
22 before you deposit it in TD Bank. Honey, you will also send me
23 deposit receipt for TD Bank too. So you are sending me two
24 pictures, cashier's check and receipt from TD Bank. Do you
25 understand? They have a branch here in New Orleans, once they

NC5Gwad5

Gutierrez - Direct

1 confirm the payment in New York, they will call their branch in
2 New Orleans to deliver the money to the copier company. I
3 prefer going through a financial company to ensure that the
4 copier company gets their money.

5 MR. FERGENSON: Let's scroll and skip the second page.

6 Can you zoom on the check, please.

7 Q. Now, Ms. Gutierrez, what is the date on this check?

8 A. April 23rd, 2020.

9 Q. This is a cashier's check?

10 A. Yes.

11 Q. What is the amount?

12 A. \$43,490.

13 Q. Was this check issued by Space Coast Credit Union?

14 A. No.

15 Q. Is a remitter listed on this check?

16 A. Yes.

17 (Continued on next page)

NC5sWAD6

Gutierrez - Direct

1 BY MR. FERGENSON:

2 Q. Who is the remitter?

3 A. Patsky Kwitkin.

4 Q. And who was this \$43,490 cashier's check from Patsky
5 Kwitkin made payable to?

6 A. 155 Canal Street, New York, New York, 10013.

7 Q. Sorry. Just focusing you on the second --

8 A. I'm sorry. Nadine Jasmine Wade.

9 I was looking at the wrong spot.

10 Q. No problem. Thank you, Ms. Gutierrez.

11 And now to focus you on the line you were just looking
12 at, Ms. Gutierrez, the address?

13 A. Yes.

14 Q. Now, beneath that, what does it say beneath the address?

15 A. For Richard Francisco.

16 Q. Let's zoom out, please. Let's scroll down and let's zoom
17 on the next photo.

18 Could you please read the text towards the top,
19 Ms. Gutierrez?

20 A. 10:29 a.m., 4/23/20*, 012 -- I think that's another -- 0.
21 CK deposit. \$43,490.

22 Q. Let's zoom back out.

23 Let's look quickly at Government Exhibit 965.

24 This is Patsy Kwitkin again?

25 A. Yes.

NC5sWAD6

Gutierrez - Direct

1 Q. What's the date?

2 A. April 29, 2020.

3 Q. OK. And we don't even need to read the text. Let's just
4 scroll down. Let's zoom on the check.

5 OK. And, Ms. Gutierrez, if you can read it, how much
6 was this check for?

7 A. \$74,000.

8 Q. And do you see -- if you were looking at the check
9 properly, in the top left of the check, what's the name printed
10 there?

11 A. Patsy Kwitkin.

12 Q. What's the name printed on the check beneath that?

13 A. Nadine Jasmine Wade.

14 Q. Let's zoom back out, scroll down, and zoom on this photo
15 quickly.

16 Ms. Gutierrez, I'll just ask you to read the dollar
17 amount on the top right of the check if it were right side up.

18 A. \$74,000.

19 Q. Let's zoom out. Let's go to another individual, second to
20 last.

21 Let's pull up Government Exhibit 971.

22 Now, what's the name in the top left of this exhibit,
23 Ms. Gutierrez?

24 A. Rose Martin.

25 Q. What's the date?

NC5sWAD6

Gutierrez - Direct

1 A. November 25, 2019.

2 Q. OK. Now, would you please read the white and I'll read the
3 blue.

4 A. FedEx: Your package was received on 11/25/19 at Walgreens
5 09802, 827 Magill Drive, North Huntingdon, PA, 15642.

6 Q. I'll stop you there. That's sufficient.

7 Thank you, Ms. Gutierrez.

8 We can zoom back out and let's zoom on the cashier's
9 check.

10 How much is this check for?

11 A. \$8,000.

12 Q. And who is it made payable to?

13 A. Honcho Ways, Inc.

14 Q. And who is the remitter beneath that?

15 A. Rose Lee Martin.

16 Q. Let's zoom back out and let's scroll down. Let's zoom on
17 the FedEx envelope.

18 Who is this FedEx envelope addressed to?

19 A. Nadine Wade.

20 Q. And is it Nandine Wad?

21 A. Yes, yeah. Nandine.

22 Q. What's the company?

23 A. Honcho Ways, Inc.

24 Q. And the address?

25 A. 32 Holland Street.

NC5sWAD6

Gutierrez - Direct

1 Q. OK. Let's scroll down and let's keep scrolling.

2 Does this FedEx record match that envelope?

3 A. Yes, it does.

4 Q. And is there a signature on the FedEx record?

5 A. No.

6 MR. FERGENSON: Ms. Foote, let's go to Government
7 Exhibit 973.

8 Q. This is also Rose Martin?

9 A. Yes, it is.

10 Q. What's the date?

11 A. December 17, 2019.

12 Q. OK. You read the white and I'll read the blue.

13 A. I just want you to get here.

14 Q. We will be together soon.

15 A. I know. The loan is not in the bank yet, but I will keep
16 checking. Should be today.

17 Q. OK baby.

18 A. I just want everything to go good.

19 Q. Everything will work out.

20 A. I know and I believe you.

21 Q. Then there's a break.

22 Pay to: Royal Treasure Chest, LLC, mailing to name:
23 Nadine J. Wade, address: 244 East 161st Street, The Bronx,
24 New York.

25 That's the information lovey. That's nice.

NC5sWAD6

Gutierrez - Direct

1 A. OK. I got it. I will text you before I leave.

2 MR. FERGENSON: OK. Let's keep scrolling. Let's zoom
3 out, Ms. Foote, please. Let's scroll down and let's zoom on
4 the check.

5 Q. How much is this check for?

6 A. \$23,000.

7 Q. Who is it made payable to?

8 A. Royal Treasure Chest, LLC.

9 Q. Is the remitter name first listed on the face of the check?

10 A. Yes.

11 Q. Who is the remitter name?

12 A. Rose Lee Martin.

13 MR. FERGENSON: Zoom out. Let's scroll down. We can
14 keep going. I'm sorry.

15 Actually, I'm sorry, Ms. Foote. I didn't mean to skip
16 over that. I apologize.

17 Let's zoom on this check.

18 Q. Now, Ms. Gutierrez, is this official check from the same
19 bank of the check we just looked at or a different bank?

20 A. Different bank.

21 Q. And what's the date?

22 A. December 17, 2019.

23 Q. So same date as the messages we're looking at still?

24 A. Yes.

25 Q. And what's the amount here?

NC5sWAD6

Gutierrez - Direct

1 A. \$2,000.

2 Q. And is there a remitter listed on this check?

3 A. Yes.

4 Q. From a different bank?

5 A. Yes.

6 Q. What's the remitter's name?

7 A. Rose Lee Martin.

8 Q. And who was this \$2,000 check from Rose Lee Martin payable
9 to?

10 A. Royal Treasure Chest, LLC.

11 Q. Let's zoom back out. Let's scroll down. OK. And then
12 there is a FedEx envelope. Let's zoom.

13 Who is this FedEx envelope addressed to?

14 A. Nadine J. Wade.

15 Q. At that Bronx Walgreens?

16 A. Yes.

17 Q. And are you able to see above that in the top left what the
18 sender information is?

19 There's a company. Could you read the company first?

20 A. Yes. It's PA Notary & Tag.

21 Q. What's the city and state of the address?

22 A. Irwin, Pennsylvania.

23 Q. OK. Let's zoom back out. Let's scroll down.

24 Does this FedEx record tracking number match the
25 envelope we just looked at?

NC5sWAD6

Gutierrez - Direct

1 A. Yes.

2 Q. Who signed for this FedEx envelope with two checks from two
3 different banks from rose Martin?

4 A. N. Wade.

5 Q. All right. Let's go to Government Exhibit 975.

6 This is still Rose Martin?

7 A. Yes.

8 Q. What's the date?

9 A. December 19, 2019.

10 Q. OK. I'll read the blue, you start with the white, please.

11 A. I checked and nothing in the bank yet hopefully by.

12 Q. Hopefully. What have you been doing?

13 A. Then I could do the check and FedEx it out first.

14 Q. That's right. Thank you.

15 A. Just want you to get off that rig soon.

16 Q. I want to get off too. We need to be together.

17 Excuse me. There's a break.

18 Hi sweetie. I just spoke with the shipping.

19 A. Good morning my dear.

20 Q. And let's go out of this and let's scroll down. Keep
21 scrolling. OK. Now, let's zoom on the photos there.

22 Ms. Gutierrez, are you able to read what it says in
23 the top left corner?

24 A. The zero numbers.

25 Q. No above that. Does it says United States Postal Service?

NC5sWAD6

Gutierrez - Direct

1 A. Yes.

2 Q. And to the right of that, what does it say?

3 A. Postal money order.

4 Q. OK. What's the dollar amount listed on this?

5 A. 1,000.

6 Q. And is there a different \$1,000 postal money order beneath
7 that?

8 A. Yes.

9 MR. FERGENSON: OK. Let's zoom out, Ms. Foote.
10 Scroll down.

11 Q. And here is another photo of two \$1,000 postal money
12 orders?

13 A. Yes.

14 Q. And now, Ms. Gutierrez, I'm not going to ask you to do it
15 on the stand.

16 But prior to your testimony, did you compare the
17 serial numbers on these postal money orders in this photo with
18 the two \$1,000 postal money orders in the first photo?

19 A. Yes.

20 Q. Are they the same or different?

21 A. They are different.

22 Q. So this is \$4,000 in postal money orders?

23 A. Yes.

24 Q. Let's zoom out. Scroll down.

25 Another photo of two \$1,000 postal money orders.

NC5sWAD6

Gutierrez - Direct

1 Ms. Gutierrez, did you compare the serial numbers on
2 these?

3 A. Yes.

4 Q. Are these the same as any that we have looked at or
5 different?

6 A. They are different.

7 Q. Let's scroll down. Let's scroll down one more.

8 OK. Here's a fourth photo of two \$1,000 postal money
9 orders?

10 A. Yes.

11 Q. And did you compare the serial numbers on these postal
12 money orders with the ones we have looked at previously?

13 A. Yes, I did.

14 Q. And are they the same or different?

15 A. They are different.

16 Q. So that is \$8,000 in postal money orders total?

17 A. Yes.

18 MR. FERGENSON: Ms. Foote, let's scroll back up one
19 page, please. Let's zoom on the FedEx envelope.

20 Q. Ms. Gutierrez, where were these \$8,000 in postal money
21 orders sent?

22 A. The Bronx Walgreens, 244 East 161st Street.

23 Q. And to who is the individual listed on the address?

24 A. Nadine J. Wade.

25 Q. OK. Let's zoom back out and let's scroll down.

NC5sWAD6

Gutierrez - Direct

1 Does this FedEx record tracking number match the one
2 on the FedEx envelope we just looked at?

3 THE COURT: Slow down, counsel. Thank you.

4 MR. FERGENSON: Sorry, your Honor.

5 Q. Ms. Gutierrez, who signed for the FedEx package with \$8,000
6 in postal money orders in it?

7 A. N. Wade.

8 MR. FERGENSON: All right. Ms. Foote, let's go to
9 Government Exhibit 976, please.

10 Q. Is this still Rose Martin?

11 A. Yes.

12 Q. And what's the date?

13 A. December 27, 2019.

14 Q. This is just eight days later after the \$8,000 in money
15 orders?

16 A. Yes.

17 Q. I'll read the blue.

18 Honey they just called me now. They said it's should
19 be all post office money order. So you might have to go to two
20 different location to purchase all the money order. You could
21 purchase 9,750 at one location then drive to another post
22 office to purchase another 9,750. They said post office money
23 order is the best. Because I told them I don't want any delay.

24 A. All right.

25 Q. There's a brief call.

NC5sWAD6

Gutierrez - Direct

1 A. My dear. I have 17.

2 Q. Bad connection.

3 A. Remember your son was getting 2,500 right.

4 Q. That's right.

5 Scroll down.

6 I meant you should purchase money order of 8,500 at
7 two different locations.

8 A. OK. I think I will go to four different locations.

9 Q. OK lovey. Sorry for the stress.

10 A. I know. I will leave soon.

11 Q. OK baby.

12 A. I will text you before I leave.

13 Q. OK baby.

14 A. Hey my dear. I am leaving now.

15 Q. OK. Then there is a break. Let's keep going.

16 I care about you Rose. Then there is a symbol emoji.

17 MR. FERGENSON: OK. Now, there is an incoming photo.

18 Let's zoom on that.

19 Q. Now, how many \$1,000 postal money orders are shown in this
20 photo?

21 A. Four.

22 Q. And are the serial numbers all different on the left?

23 A. Yes.

24 MR. FERGENSON: Let's zoom back out. Scroll down.

25 Yes, please, thank you, Ms. Foote.

NC5sWAD6

Gutierrez - Direct

1 Q. How many \$1,000 postal money orders are in this photo?

2 A. Five.

3 Q. And serial numbers on the left, are they all different?

4 A. Yes.

5 Q. Are they different from the first photo of the \$1,000
6 postal money orders?

7 A. Yes.

8 MR. FERGENSON: OK. Let's scroll down. Zoom on this
9 photo.

10 Q. How many \$1,000 postal money orders are in this photo,
11 Ms. Gutierrez?

12 A. Six.

13 Q. And are the serial numbers on the left all different?

14 A. Yes.

15 Q. Different from the earlier photos of the \$1,000 postal
16 money orders?

17 A. Yes.

18 MR. FERGENSON: Let's scroll down. Let's actually,
19 Ms. Foote, let's keep scrolling. Let's zoom on that.

20 Q. Now, Ms. Gutierrez, how many \$50 bills are shown in this
21 photo?

22 A. Nine.

23 Q. And do you see -- just maybe focus on the top two bills.

24 Do you see the series of letters and numbers printed
25 in the bottom right?

NC5sWAD6

Gutierrez - Direct

1 A. Yes.

2 Q. And are you able to see it on the first one and the second
3 one?

4 A. Yes.

5 Q. At least partially?

6 A. Yes.

7 Q. OK. Now, let's continue going and we can zoom back out.

8 Do you see the incoming message after that, let me
9 know if you got nine photo?

10 A. Yes.

11 Q. And you said there were nine \$50 bills?

12 A. Yes.

13 Q. OK. And not to make you do math, how much in total was
14 that cash?

15 A. It's \$450.

16 Q. Thank you, Ms. Gutierrez.

17 All right. Now let's zoom on this second photo of
18 cash.

19 How many \$50 bills are shown in this photo,
20 Ms. Gutierrez?

21 A. Eight.

22 Q. So is that \$400?

23 A. Yes.

24 Q. And to the extent they are visible, did you compare the
25 numbers and letters in the lower right of these dollar bills

NC5sWAD6

Gutierrez - Direct

1 with the ones that were visible in the first photo?

2 A. Yes, I did.

3 Q. Are they the same or different?

4 A. They are different.

5 Q. So we're at \$850 in cash total?

6 A. Yes.

7 MR. FERGENSON: All right. Let's keep scrolling. All
8 right. Let's zoom on this photo.

9 Q. How many \$50 bills are in this photo, Ms. Gutierrez?

10 A. Four -- not four, I'm sorry. Eight.

11 Q. And now, kind of focusing you on portions of those letters
12 and numbers, are those visible here?

13 A. Yes, some of them.

14 Q. And did you compare those with the ones in the earlier
15 photos, to the extent they are visible?

16 A. I did.

17 Q. And are they the same or different?

18 A. They are different.

19 Q. All right. So are we at -- we got another \$400, right?

20 A. 1250.

21 Q. We're at \$1,250, Ms. Gutierrez?

22 A. Yes.

23 Q. All right. Let's keep going.

24 How many \$50 bills are shown in this photo,
25 Ms. Gutierrez?

NC5sWAD6

Gutierrez - Direct

1 A. Another eight.

2 Q. It's another \$400?

3 A. Yes.

4 Q. To the extent they are visible, did you compare the serial
5 numbers on these dollar bills with the ones in the earlier
6 photos?

7 A. Yes.

8 Q. Are they the same or different?

9 A. They are different.

10 Q. OK. So are we at now \$1,650 total?

11 A. Yes.

12 MR. FERGENSON: All right. Let's keep going,

13 Ms. Foote. Let's zoom on that last one.

14 Q. How many \$50 bills are shown in this fifth photo of cash,
15 Ms. Gutierrez?

16 A. There is seven.

17 Q. So how many in this batch?

18 THE COURT: She just said seven.

19 Q. How much?

20 A. I've been doing this for a while.

21 Q. Is it \$350 in this batch, Ms. Gutierrez?

22 A. Yes.

23 Q. All right. So we had 1,650 earlier, now are we at an even
24 2,000?

25 A. Yes.

NC5sWAD6

Gutierrez - Direct

1 MR. FERGENSON: All right. Now, Ms. Foote, if we can
2 scroll back up a few pages.

3 THE COURT: Counsel, may I have a sense of how much
4 more?

5 MR. FERGENSON: I am wrapping up, your Honor. I have
6 about two more pages.

7 THE COURT: OK. That's fine. If you'll just excuse
8 me, I'm having a little bit of a back issue. I want to stand
9 up.

10 Anybody else has a back issue, you can join me. I'm
11 sorry. I need to walk around a minute. So thank you.

12 All right. Anybody who wants to get up as well can
13 do. I'm not demanding that you do so, just offering you the
14 opportunity.

15 All right. Thank you so much.

16 Counsel, you may continue.

17 MR. FERGENSON: Thank you, your Honor.

18 All right. Mrs. Foote, let's zoom on the FedEx
19 envelope.

20 BY MR. FERGENSON:

21 Q. OK. Who is this FedEx envelope addressed to,
22 Ms. Gutierrez?

23 A. Nadine Wade.

24 Q. That same Bronx Walgreens?

25 A. Yes.

NC5sWAD6

Gutierrez - Direct

1 Q. And, you know, beneath that after the bar code, could you
2 read the last four of the tracking number?

3 A. 2456.

4 MR. FERGENSON: Let's scroll all the way down,
5 Ms. Foote.

6 Q. And, Ms. Gutierrez, what's the last four of the tracking
7 number on this record?

8 A. 2456.

9 Q. Same as on the envelope to Nadine Wade?

10 A. Yes.

11 Q. Ms. Gutierrez, who signed for this FedEx envelope filled
12 with money orders and cash?

13 A. N. Wade.

14 MR. FERGENSON: Ms. Foote, let's go to Government
15 Exhibit 977.

16 Q. Is this still Rose Martin, Ms. Gutierrez?

17 A. Yes.

18 Q. What's the date?

19 A. January 10, 2020.

20 MR. FERGENSON: OK. Let's just -- we don't even need
21 to read the text, Ms. Foote. Let's just scroll down.

22 Let's just zoom on that check.

23 Q. Ms. Gutierrez, how much is this check for?

24 A. \$37,000.

25 Q. What's the date?

NC5sWAD6

Gutierrez - Direct

1 A. January 10, 2020.

2 Q. Is there a remitter listed?

3 A. Yes.

4 Q. Who is the remitter?

5 A. Rose Lee Martin.

6 Q. And who is this \$37,000 cashier's check from Rose Martin
7 payable to?

8 A. Royal Treasure Chest, LLC.

9 MR. FERGENSON: Let's zoom back out. Let's scroll
10 down. Let's zoom on the FedEx envelope.

11 Q. All right. Where was this \$37,000 check sent,
12 Ms. Gutierrez?

13 A. The Bronx Walgreens, 244 East 161st Street.

14 Q. And to which individual?

15 A. Nadine Wade.

16 MR. FERGENSON: All right. Let's zoom out. Let's
17 keep scrolling down.

18 Q. And does the tracking number on this record match the
19 tracking number on the envelope?

20 A. Yes.

21 Q. Who signed for the \$37,000 cashier's check from Rose Lee
22 Martin?

23 A. N. Wade.

24 MR. FERGENSON: OK. Ms. Foote, let's go to Government
25 Exhibit 978.

NC5sWAD6

Gutierrez - Direct

1 Q. Let's just, again, let's just -- this is still Rose Martin,
2 right, Ms. Gutierrez?

3 A. Yes.

4 Q. What's the date?

5 A. January 24, 2020.

6 MR. FERGENSON: All right. Ms. Foote, let's go to the
7 second page, please. I'm sorry. Keep ...

8 Let's zoom on the photo of the cash.

9 Q. Ms. Gutierrez, how many \$100 bills are shown in this photo?

10 A. Ten.

11 MR. FERGENSON: OK. Let's zoom out. Let's scroll
12 down.

13 We'll come back to that. Let's zoom on the next
14 photo.

15 Q. Do you see in the top right of one of these pieces of paper
16 what it says, Ms. Gutierrez?

17 A. Yeah, money order.

18 Q. And what's the dollar amount on each of these?

19 A. \$500.

20 Q. How many \$500 money orders are in this photo?

21 A. Five.

22 MR. FERGENSON: Zoom out, please. Let's keep
23 scrolling. Let's zoom on that photo.

24 Q. And do you see what it says on these pieces of paper
25 towards the top center, Ms. Gutierrez?

NC5sWAD6

Gutierrez - Direct

1 A. Um, international money order.

2 Q. And do you see the dollar amount after pay only?

3 A. It's \$500.

4 Q. How many \$500 international money orders are in this photo?

5 A. Three.

6 MR. FERGENSON: Zoom out. Scroll down.

7 Let's go back up to page three, Ms. Foote, or to the
8 FedEx. Page four, excuse me. Let's zoom on that.

9 Q. Ms. Gutierrez, who is this sent to?

10 A. Jazmine Wad.

11 Q. At what address?

12 A. 32 Holland Street, Newark, New Jersey.

13 MR. FERGENSON: OK. And let's scroll to the bottom,
14 Ms. Foote.

15 Q. Is this the FedEx record matching the tracking number on
16 that photo?

17 A. Yes.

18 Q. And is there a signature for this package?

19 A. No.

20 MR. FERGENSON: All right. Ms. Foote, let's pull up
21 Government Exhibit 979.

22 Q. Still Rose Martin?

23 A. Yes.

24 Q. What's the date?

25 A. January 28, 2020.

NC5sWAD6

Gutierrez - Direct

1 Q. That's four days after the one we just looked at?

2 A. Yes.

3 Q. OK. Let's just zoom on the FedEx package.

4 Who is this going to?

5 A. Jazmine Wad.

6 Q. At what address?

7 A. 32 Holland Street in Newark.

8 Q. Zoom out. Let's scroll down and zoom on the photo.

9 Ms. Gutierrez, how many \$500 money orders are shown in
10 this photo?

11 A. Six.

12 MR. FERGENSON: And, Ms. Foote, we can scroll all the
13 way down.

14 Q. Is this the tracking number that matches the FedEx
15 envelope?

16 A. Yes.

17 Q. Was there a signature for this FedEx delivery?

18 A. No, there was not.

19 Q. All right. Let's go to one last individual, Ms. Gutierrez.

20 MR. FERGENSON: Ms. Foote, can you please pull up
21 Government Exhibit 931. Scroll down. Excuse me.

22 Q. Ms. Gutierrez, what is the name in the top left here?

23 A. Rhonda Dillon.

24 Q. What's the date?

25 A. October 10, 2019.

NC5sWAD6

Gutierrez - Direct

1 Q. I'm not going to read the text. Let's just scroll down.
2 Let's zoom on the second photo of the check.

3 Now, Ms. Gutierrez, I'm going to ask you to read this,
4 to the extent you can.

5 Is this a cashier's check?

6 A. Yes.

7 Q. For how much?

8 A. \$11,000.

9 Q. What's the date?

10 A. October 10, 2019.

11 Q. And now what's the financial institution that sent this?

12 A. Greater Nevada Credit Union.

13 Q. OK. And were you able to read the city and state printed
14 on the check?

15 A. Yes. Carson city, Nevada.

16 Q. OK. Now, I want to focus you, if you were looking at the
17 check properly, in its bottom left.

18 Do you see at the very bottom it says memo? Do you
19 see that?

20 A. Yes.

21 Q. What is written in the memo line for this \$11,000 cashier
22 check?

23 A. Richard B. Francisco.

24 Q. And who is this -- to whom is this \$11,000 cashier's check
25 with a memo line of Richard B. Francisco payable to?

NC5sWAD6

Gutierrez - Direct

1 A. Royal Treasure Chest, LLC.

2 MR. FERGENSON: Let's zoom out. Let's scroll down.

3 And let's zoom on the first picture of the FedEx envelope.

4 Q. Ms. Gutierrez, on the left do you see, you know, a FedEx
5 sticker?

6 A. Yes.

7 Q. And who are those FedEx stickers addressed to?

8 A. Nadine Wade.

9 Q. At that same Bronx Walgreens address we've been looking at?

10 A. Yes.

11 Q. Now, I want to focus you on what you see on the right.

12 Could you describe what is shown in the photograph on
13 the right?

14 A. It's an envelope.

15 Q. And in the top left, is that the same credit union that was
16 on the check?

17 A. Yes.

18 Q. OK. What's the name in the center of the envelope?

19 A. Nadine J. Wade.

20 Q. And then what does it say in the bottom left of this
21 envelope?

22 A. Re Richard Francisco.

23 MR. FERGENSON: Let's zoom out. Can you scroll down
24 quickly, Ms. Foote. Let's just zoom quickly on the package
25 FedEx envelope. It's a little blurry.

NC5sWAD6

Gutierrez - Direct

1 Ms. Foote, if you don't mind, if we can go back to the
2 original FedEx picture and zoom on that. Yes, please.

3 Q. What are the last three of the tracking number here,
4 Ms. Gutierrez? Last four, excuse me?

5 A. 3037.

6 Q. Let's zoom out.

7 And what are the last four of the tracking number in
8 this FedEx record, Ms. Gutierrez?

9 A. 3037.

10 Q. And who signed for this package with a letter and a check
11 for Richard Francisco?

12 A. N. Wade, spelled incorrectly.

13 MR. FERGENSON: All right, Ms. Foote. We can take
14 that down.

15 Q. Now, Ms. Gutierrez, we looked at FedEx records for
16 envelopes sent to three addresses, right?

17 A. Right.

18 Q. Those addresses were in the Bronx, in New Jersey, and in
19 Florida, correct?

20 A. Yes.

21 Q. All right. Now, for the Bronx and the New Jersey
22 addresses, have we looked at all the FedEx records you reviewed
23 or only some?

24 A. Only some.

25 Q. Did you make summary charts for certain FedEx packages sent

NC5sWAD6

Gutierrez - Direct

1 to those addresses?

2 A. Yes.

3 MR. FERGENSON: Ms. Foote, please show the witness
4 what's marked for identification as Government Exhibit 405-S.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. And what does this document show?

8 A. It's just summarizes some FedEx information.

9 Q. And what's the address, you know, the mailing address in
10 the recipient name column?

11 A. 32 Holland Street.

12 Q. And are these all the FedEx records in evidence, does this
13 summarize all the FedEx records in evidence for shipments sent
14 to this address or just some?

15 A. Just some.

16 Q. Which ones?

17 A. Ones in which the recipient name was Jazmine Wade or Nadine
18 Wade or some variation of that name.

19 Q. Is this chart accurate?

20 A. Yes.

21 MR. FERGENSON: Government offers Government Exhibit
22 405-S.

23 MR. SOLOWAY: No objection.

24 THE COURT: Government Exhibit 405-S is admitted into
25 evidence and may be shown to the jury.

NC5sWAD6

Gutierrez - Direct

1 (Government's Exhibit GX 405-S received in evidence)

2 MR. FERGENSON: Publish, please.

3 BY MR. FERGENSON:

4 Q. Now, Ms. Gutierrez, let's just quickly walk through some of
5 these columns.

6 What's in the first column on the left?

7 A. It's just a counter.

8 Q. And the column to the right of that?

9 A. Tracking number.

10 Q. And to the right of that?

11 A. The ship date.

12 Q. And then what comes after ship date?

13 A. The shipper's name.

14 Q. And then after the shipper's name?

15 A. The recipient's name.

16 Q. Then there is a delivery received by column.

17 What's there?

18 A. That's would be who the delivery was received by.

19 Q. And delivery time, what's that?

20 A. The time of the delivery.

21 Q. OK. Now, what's the date of the --

22 Just looking at the first one, what's the date on the
23 top delivery?

24 A. March 18, 2019.

25 Q. And who was the recipient name?

NC5sWAD6

Gutierrez - Direct

1 A. Jazmine Wad.

2 Q. And these are all 32 Holland Street, right?

3 A. Yes.

4 MR. FERGENSON: Let's scroll, Ms. Foote. Keep
5 scrolling, please.

6 Q. You know, row 48, what's the date of the last shipment?

7 A. March 3, 2020.

8 Q. And who signed for that one?

9 A. M. Felix.

10 Q. Who is the sender of that package?

11 A. Patsy Kwitkin.

12 MR. FERGENSON: Ms. Foote, let's take that down.

13 Let's show the witness, please, what's marked as
14 Government Exhibit 403-S.

15 Q. All right. Ms. Gutierrez, do you recognize this document?

16 A. I do.

17 Q. Is this the same kind of summary chart for the 244 East
18 161st Street address as the one we just looked at for 32
19 Holland?

20 A. Yes.

21 Q. Is this chart accurate?

22 A. Yes.

23 MR. FERGENSON: Government offers Government Exhibit
24 403-S.

25 MR. SOLOWAY: No objection.

NC5sWAD6

Gutierrez - Direct

1 THE COURT: Government Exhibit 403-S is admitted into
2 evidence and may be published to the jury.

3 (Government's Exhibit GX 403-S received in evidence)

4 MR. FERGENSON: Thank you, Ms. Foote.

5 Q. So this is the same type of summary chart we were just
6 looking at?

7 A. Yes.

8 Q. And what's the address for this one?

9 A. 244 East 161st Street.

10 Q. Like the delivery address, that is?

11 That's the recipient address?

12 A. Yes.

13 Q. And that's the Bronx Walgreens we've been looking at,
14 right, Ms. Gutierrez?

15 A. Yes.

16 Q. OK. What's the date of the first shipment listed here?

17 A. The first delivery date is August 30, 2019.

18 MR. FERGENSON: And let's just scroll, Ms. Foote.

19 Q. Focusing you on row 42, what's the date of the last
20 delivery?

21 A. July 2, 2020.

22 Q. And the recipient name of that delivery was whom?

23 A. Nadine J. Wade.

24 Q. And who signed for that?

25 A. J. Wade.

NC5sWAD6

Gutierrez - Direct

1 MR. FERGENSON: No further questions. Thank you,
2 Ms. Gutierrez.

3 THE COURT: All right. I imagine there is
4 cross-examination. Correct, sir?

5 MR. SOLOWAY: Very brief. Under ten minutes.

6 THE COURT: If it's all right with you, I think we
7 should, nonetheless, take the break. I appreciate what you're
8 saying.

9 Let's take a brief afternoon break just so we can all
10 get up and stretch our legs, and I'll see you within ten
11 minutes.

12 I'll ask you, please, not to discuss this case with
13 each other or with anyone else. Keep an open mind until all of
14 the evidence is in. And we'll see you in a few minutes.

15 Thank you very much.

16 (Continued on next page)

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24
25

NC5sWAD6

Gutierrez - Direct

1 (Jury not present)

2 THE COURT: If I can ask the parties to be seated for
3 a moment, please.

4 Ms. Gutierrez, I would like to remind you, you remain
5 under oath, and I'd like to let you know, now that you're under
6 cross-examination, you may not discuss the substance of your
7 testimony with the government. Do you understand?

8 THE WITNESS: Yes.

9 THE COURT: I understand there is approximately ten
10 minutes. We'll see about redirect.

11 Mr. Fergenson, I say this with all the esteem I have
12 for you. You're underestimating your times by a fair amount,
13 so I think you have to overstate what you think it is so that
14 my expectations will be better managed.

15 Is it the contemplation of the parties that there will
16 be another witness that we will be starting with today?

17 MR. KING: Our Honor, we have another witness who is
18 about 20 minutes. I think that is realistic assessment.

19 THE COURT: Oh, OK. Not a Mr. Fergenson assessment.

20 MR. KING: Got you.

21 THE COURT: No, that's fine. Let's hope for that
22 then.

23 OK. There was a snack for the jury, so I wanted them
24 to be fed. We'll come back.

25 Let's hope we at least get through that witness. Of

NC5sWAD6

Gutierrez - Direct

1 course, counsel wouldn't know what the anticipated cross is
2 without hearing the direct testimony. We'll see where we go
3 for today.

4 MR. SOLOWAY: The next witness?

5 THE COURT: Yes, please.

6 MR. SOLOWAY: I don't think we expect very much cross.

7 THE COURT: Oh, then God willing we will get through
8 that witness as well. I'll cross my fingers and toes for this.

9 I'll see you in a few minutes. Thank you very much.

10 (Recess)

11 Mr. Stern, as the jury is walking in, if you want to
12 go to the podium, sir, you can. Thank you.

13 MR. STERN: OK.

14 (Continued on next page)

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Gutierrez - Cross

1 (Jury present)

2 THE COURT: Please be seated. We're just waiting for
3 Ms. Wade.

4 Thank you, Mr. Stern.

5 CROSS-EXAMINATION

6 BY MR. STERN:

7 Q. Hi, Ms. Gutierrez.

8 A. Hi.

9 Q. Ms. Gutierrez, what we've been going over for the last
10 several hours were not the entirety of the conversations had
11 between whoever the person is, Francisco and the women he was
12 talking to, are they?

13 A. I couldn't answer that. I don't -- I assume not.

14 Q. Well, did you read the entire conversations at any point?

15 THE COURT: Do you mean into the record, sir, or in
16 her life working on this case?

17 MR. STERN: In her life as a paralegal.

18 A. Wait. Can you ask the question again?

19 Q. Yes.

20 There were conversations between the various women and
21 Francisco, whatever his name is, right?

22 A. Yes.

23 Q. Did you read those in their entirety?

24 A. In the record?

25 THE COURT: No. No, he means --

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Gutierrez - Cross

1 A. In my life? No.

2 Q. Who prepared the excerpts that you were working from today?

3 A. I did.

4 Q. But you didn't excerpt them from the conversations?

5 A. Are you asking if I chose what to include?

6 Q. Yes.

7 A. Which message to include?

8 Q. Yes.

9 A. The attorneys did.

10 Q. OK. And that was done before you ever saw the
11 conversations?

12 A. Yes.

13 Q. So you don't know, for example, if there is certain
14 patterns in those conversations in parts that weren't included
15 here?

16 A. I don't know if there is any pattern.

17 Q. You don't know if in every one of those conversations the
18 women are sent a record of how much money this Francisco has?

19 A. I didn't see anything like that.

20 Q. You don't know if they have conversations about their
21 families, he tells them about his family, and they tell him
22 about theirs?

23 A. Besides what the -- there was some discussion. But besides
24 that, no.

25 Q. There were some sections in what you were dealing with?

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Gutierrez - Cross

1 A. Yes.

2 Q. But all the rest of these conversations you know nothing
3 about, is that right?

4 A. That's right.

5 MR. STERN: Thank you.

6 MR. FERGENSON: No redirect, your Honor.

7 THE COURT: All right. Ms. Gutierrez, I think very
8 much. You may step down.

9 (Witness excused)

10 Would the government please call its next witness.

11 MR. FERGENSON: Government calls T.R. Pescod.

12 THE DEPUTY CLERK: Mr. Pescod, I'll ask you to step up
13 into the witness stand and remain standing.

14 T.R. PESCOD,

15 called as a witness by the Government,

16 having been duly sworn, testified as follows:

17 You can be seated, and into the microphone, please
18 state and spell your full name for the record.

19 THE DEPUTY CLERK: My name is Thomas R. Pescod Junior,
20 P-e-s-c-o-d.

21 THE COURT: Thank you very much.

22 Counsel, you may inquire.

23 Ms. Noriega, you'll find out where the alarm is coming
24 from. Thank you.

25 DIRECT EXAMINATION

NC5sWAD6

Pescod - Direct

1 BY MR. FERGENSON:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. What's your name?

5 A. Thomas R. Pescod Junior. I'm also known as T.R. Pescod.

6 Q. Mr. Pescod, where do you live?

7 A. Amagansett, New York.

8 Q. Where did you grow up?

9 A. I grew up in West Hampton Beach, New York.

10 Q. What do you do for work?

11 A. I'm a designer. But for 25 plus years, I've also been
12 modeling and acting.

13 Q. And, just generally, what kind of modeling and acting?

14 A. I've done a number of things. I've done TV commercials for
15 cars, for perfumes, a lot of fashion campaigns. Um, everything
16 from Macy's to L.L. Bean to foreign companies. In particular,
17 a brand called Cesare Attolini which is all bespoke menswear.

18 Q. Where is Cesare Attolini based?

19 A. In Italy.

20 Q. Now, Mr. Pescod, have pictures from your acting or modeling
21 career been made available online?

22 A. Yes.

23 Q. What social media accounts, if any, do you use?

24 A. Primarily Instagram. But to have Instagram, you have to
25 have a Facebook account. I have Facebook as well, but I

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Pescod - Direct

1 haven't really been active on there in a number of years.

2 Q. Focusing on your Instagram account, is it public?

3 A. Yes.

4 Q. What sorts of things do you post on Instagram?

5 A. Lifestyle, family events, holidays, also photographs from
6 my modeling career. It's kind of a part of our business, that
7 you're shown online and you have a certain amount of followers.

8 Q. What about photos of yourself?

9 A. Photos of myself, photos of myself at photo shoots, videos
10 of days at the beach. Sometimes when I'm on location shooting
11 modeling work. There was a period that I was sort of speaking
12 into the camera and producing little stories to garner
13 interest.

14 MR. FERGENSON: Ms. Foote, could you please show just
15 for the witness what's marked as Government Exhibit 503-A.

16 THE COURT: Any objection from defense counsel?

17 I'm not sure --

18 MR. SOLOWAY: Is he offering?

19 THE COURT: There will be at some point. I'm trying
20 to streamline.

21 MR. SOLOWAY: No objection.

22 THE COURT: Assuming it will be offered by the
23 government, Government Exhibit 503-A is admitted into evidence
24 and may be published to the jury. Thank you.

25 (Government's Exhibit GX 503-A received in evidence)

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Pescod - Direct

1 MR. FERGENSON: Thank you, your Honor.

2 Please publish.

3 BY MR. FERGENSON:

4 Q. All right. Mr. Pescod, what are we looking at here?

5 A. This is my Instagram account.

6 Q. And what does the blue checkmark next to T.R. Pescod mean?

7 A. That means that I'm verified.

8 Q. Has the account always been verified?

9 A. No. It's only been verified, um, I would say since
10 February of this year.

11 Q. And the circles towards the bottom of the page, what are
12 those?

13 A. Those are highlights, and certain videos and pictures that
14 I wanted to keep, and they stay on your account. Some of the
15 stories only last for 24 hours. If you put them in these
16 highlights, they will stay there --

17 Q. And are these --

18 A. -- for eternity.

19 Q. Are these some of the sorts of videos that you mentioned
20 earlier on your Instagram?

21 A. Yes.

22 MR. FERGENSON: Ms. Foote, we can go ahead and take
23 that down.

24 Q. Mr. Pescod, has it ever come to your attention that people
25 were using photos of you without your consent?

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Pescod - Direct

1 A. Yes.

2 Q. How did you learn about it?

3 A. Mainly through direct messages on Instagram where people
4 can send you a message directly. And there was a number of
5 people that had reached out, relatives or actually people who
6 were scammed themselves, and that's -- it's just been over the
7 past, like, six or seven years that I've been getting all kinds
8 of messages from people.

9 Q. How often were you contacted by people?

10 A. Often. There was a period of time where every week I would
11 be getting direct messages from relatives of people that were
12 scammed or people themselves, and I would try to explain I've
13 been complaining to Instagram, but nothing was really ever
14 done.

15 Q. Were you ever contacted by individuals who had thought they
16 were in a relationship with you?

17 A. Yes.

18 Q. To your recollection, would the people contacting you say
19 what name they knew you as?

20 A. Not always, no. But there were a couple of instances --
21 there were all different iterations of my name itself. Thomas
22 Pescod, Richard Pescod, Thomas_Pescod. There were a number of
23 false accounts on Instagram I would always report.

24 Then it came to my knowledge over the past, I would
25 say, about two years ago or so, that there was a Francisco and

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Pescod - Direct

1 then there was a Diego Francisco. There were a number of
2 iterations of that.

3 Q. Mr. Pescod, have you ever been on the online site Marriage
4 Minded?

5 A. No.

6 Q. What about the online site Our Time?

7 A. No.

8 Q. LoveAndSeek?

9 A. No.

10 Q. Have you ever been in a relationship with Joy Birch?

11 A. No.

12 Q. Clemi Carter Arbaugh?

13 A. No.

14 Q. Patsy Kwitkin?

15 A. No.

16 Q. Judy Crain?

17 A. No.

18 Q. Patsy Stanley?

19 A. No.

20 Q. What about Rhonda Dillon?

21 A. No.

22 Q. All right. Mr. Pescod, I would like to show you some
23 images now.

24 MR. FERGENSON: Ms. Foote, could you please pull up
25 what's in evidence as Government Exhibit 1401 at page two.

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Pescod - Direct

1 Q. Is it up on your screen Mr. Pescod?

2 A. Yes.

3 Q. Do you recognize this image?

4 A. Yes.

5 Q. What is it?

6 A. This is one of the modeling shoots I did for Cesare
7 Attolini.

8 Q. Is that the brand you mentioned earlier?

9 A. Yes.

10 Q. And you said, I believe you said it was a bespoke men's
11 attire company?

12 A. Yes.

13 Q. And what was your relationship with that company?

14 A. Um, I was the face of the brand for about ten years, and we
15 would shoot twice a year in Italy. In fact, that's one of
16 their suits that I'm wearing.

17 THE COURT: Right now?

18 THE WITNESS: No. In the photo.

19 THE COURT: OK. I just wondered.

20 THE WITNESS: No, I didn't break out the three-piece
21 suit today.

22 THE COURT: OK.

23 Q. And around what year did you start to be the face of the
24 brand?

25 A. Um, around 2012.

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Pescod - Direct

1 MR. FERGENSON: Ms. Foote, let's go to Government
2 Exhibit 1401 at page three, please.

3 Q. Do you recognize this photo?

4 A. Yes. Again, an image from one of the photo shoots for
5 Cesare Attolini.

6 Q. Same brand?

7 A. Same brand.

8 MR. FERGENSON: All right. Ms. Foote, let's now pull
9 up what's in evidence as Government Exhibit 1402 at page two.

10 Scroll down. OK.

11 Q. Mr. Pescod, is this a photograph from one of your modeling
12 campaigns?

13 A. No.

14 Q. Is this a photograph you recognize?

15 A. I recognize.

16 Q. Is this a real photograph?

17 A. No.

18 Q. Have you ever taken a selfie on a ship like that?

19 A. No.

20 Q. Have you ever worked on a rig?

21 A. No.

22 MR. FERGENSON: All right. Ms. Foote, let's go to
23 Government Exhibit 501M.

24 Q. Do you recognize this photograph?

25 A. Yes.

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Pescod - Direct

1 Q. How do you recognize it?

2 A. Um, it's a photograph of me in my home, while my home South
3 Hampton, New York, that was taken by a friend of mine, Valerie,
4 and her dog Largo.

5 Q. Would this photo have been available online?

6 A. Yes.

7 MR. FERGENSON: Ms. Foote, let's go to Government
8 Exhibit 501N.

9 Q. Is this a real photograph?

10 A. Yes.

11 Q. And what's shown in this photograph?

12 A. This was actually at the headquarters of the Cesare
13 Attolini in Naples, Italy. And I had visited the headquarters
14 previous to one of the shoots we were doing.

15 MR. FERGENSON: Ms. Foote, let's go to Government
16 Exhibit 501O.

17 Q. What about this photograph, is this a real photograph?

18 A. No.

19 MR. FERGENSON: Ms. Foote, let's go to Government
20 Exhibit 501K?

21 THE COURT: Counsel, may I inquire of something?

22 MR. FERGENSON: Yes.

23 THE COURT: Thank you.

24 Sir, I understand that it may not be a real
25 photograph. Is it possible that you took the picture of

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Pescod - Direct

1 yourself or someone took the picture of yourself that's at the
2 front and superimposed it?

3 THE WITNESS: Yes.

4 THE COURT: When you said earlier that the photograph
5 on the rig, I believe, was fake, is it the case that the
6 photograph, the picture of you is real?

7 THE WITNESS: The picture of me is real.

8 THE COURT: The setting is not real.

9 THE WITNESS: The setting is not real. The picture,
10 it's, like a, selfie that I had taken, but the --

11 THE COURT: The background.

12 THE WITNESS: -- the setting behind it was not real.

13 THE COURT: Thank you for clarification, sir.

14 Thank you, Counsel.

15 THE WITNESS: Thank you.

16 MR. FERGENSON: Thank you.

17 Ms. Foote, let's go to Government Exhibit 501K.

18 Ms. Foote, if we can zoom on the lower portion of the
19 passport.

20 BY MR. FERGENSON:

21 Q. Now, Mr. Pescod, who is shown in this photograph?

22 A. That's a photograph of me.

23 Q. What's the name on this passport?

24 A. Francisco Diego.

25 Q. What's the place of birth?

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Pescod - Direct

1 A. Rome, Italy.

2 Q. Is this your passport?

3 A. No.

4 Q. Have you ever used the name Diego Francisco?

5 A. No.

6 Q. Richard Francisco?

7 A. No.

8 Q. Tom Francisco?

9 A. No.

10 Q. Besides T.R., have you used any other names?

11 A. No.

12 MR. FERGENSON: No further questions.

13 Thank you, Mr. Pescod.

14 THE COURT: Thank you.

15 Cross-examination.

16 MR. SOLOWAY: We have no questions for Mr. Pescod.

17 THE COURT: OK. Well, perhaps we can let this witness
18 go then.

19 All right. Mr. Pescod, we thank you very much.

20 THE WITNESS: Thank you.

21 THE COURT: You're released, sir. Thank you.

22 (Witness excused)

23 Asking for a friend. Is there another short witness
24 or are the parties together asking me to break for the day?

25 I'll let you speak to each other, if you want to.

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Pescod - Direct

1 MR. KING: The next witness is a longer witness, your
2 Honor.

3 THE COURT: All right. Given that, does it make
4 sense, Mr. Soloway, to break for the day?

5 MR. SOLOWAY: It does, your Honor. I believe so.

6 THE COURT: OK. Then that's what we'll do.

7 We have made progress today. I thank you very much.
8 I appreciate, in particular, the fact that you have all been
9 very timely. I've got some folks here less timely. I'll speak
10 to them later. I know you are, and I'll ask you to continue to
11 do so.

12 I'm going to release you for the day and ask you to
13 come back tomorrow at 8:45 so we that we can begin at close to
14 nine as possible. See, I'm managing everyone's expectations.

15 I'm going to ask you, please, not to discuss this case
16 with each other or anyone else. Keep an open mind until all of
17 the evidence is in. I thank you very much for your attendance
18 and patience today.

19 All rise for the jury, please.

20 (Continued on next page)

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Pescod - Direct

1 (Jury not present)

2 THE COURT: Counsel, can I ask you to be seated for a
3 moment.

4 Thank you very much. I want to raise an issue with
5 the parties. I want to make sure I'm raising it correctly. I
6 want to be very clear and very measured, so you'll excuse me if
7 I take a little bit of time to get this out.

8 This morning there was an ex parte conference that I
9 had in my robing room with defense counsel and Ms. Wade. What
10 I mentioned to the parties and to the public when I came out
11 into court was that there was a request for certain types of
12 information, and I produced some of that information. For
13 example, I produced the indictment.

14 There was also a request for certain information that
15 I thought was better served by a FOIA request, and if one is
16 made, it will be addressed in due course.

17 There was a request, the last request I had was a
18 request for a type of statement. As I can describe, if defense
19 counsel is not recalling the statement in question, I'm just
20 going to use that name. You can tell me if you need further
21 clarification as to the time of statement.

22 MR. SOLOWAY: I know what you mean, your Honor.

23 Thank you.

24 THE COURT: OK. Thank you.

25 All right. Well, in connection with those, that

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Pescod - Direct

1 request for that type of statement, Ms. Wade gave to me several
2 statutes that she indicated supported her entitlement to
3 statements of that type from individuals involved in the trial
4 team.

5 I committed this morning that I would look into the
6 matter, and during the morning proceedings and a little bit
7 into the afternoon, Mr. Mendes, my thoughtful law clerk, was
8 looking into these statutes.

9 I think I hinted to defense counsel and to Ms. Wade at
10 the time that I didn't think these statutes were relevant, and
11 my law clerk's research, which I have checked during the lunch
12 break, confirms that they are not relevant.

13 But what is troubling to me is that, in my law clerk's
14 travels, it appears that the information or the statements or
15 the arguments that Ms. Wade were making were found and gathered
16 in a series of websites that are put forth by people who have,
17 what I'll call, a fundamentally incorrect view of the United
18 States Government and how it operates and how the United States
19 is to be considered.

20 And so it's one thing if Ms. Wade is asking me this
21 because she genuinely cares and wants this information. If
22 she's using some sort of turnkey -- I don't want to say
23 obstruction, that's not the word -- but these arguments that
24 are absolutely wrong. They are wrong when they're crafted.
25 I'm not interested in having to dispel the views of people who

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Pescod - Direct

1 subscribe to these beliefs about the United States Government.

2 So what I'm saying is, we -- my law clerk and I --
3 wasted several hours this morning looking into it. If I had
4 known that these were not her your actual thoughts, but
5 actually something she found in some weird online website, I
6 might not have given them the care I have. I now know this is
7 where they are coming from.

8 We are not going to do this again. And I'll ask
9 defense counsel to, perhaps, preview their client's requests
10 before sending me on the rabbit hole expedition that I went
11 through this morning. That's all I'm going to say on the
12 issue.

13 If counsel want me on this record to go through each
14 of the statutes and explain why it's irrelevant, I'll do that.
15 I think you would probably do better looking at them yourselves
16 and explaining to your client why they are not.

17 I'll do whatever you want, Mr. Soloway.

18 MR. SOLOWAY: Judge, we'll do our best. We hear you.
19 We will do our best to manage our client's expectations.

20 THE COURT: There you go. Now it's on. There you go.

21 MR. SOLOWAY: I think that we said, when we came in
22 and we began the proceedings this morning, that we had no
23 expectation that there was going to be any ex parte. Your
24 deputy came out this morning and said, Does anybody have
25 anything they want --

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Pescod - Direct

1 THE COURT: Yes.

2 MR. SOLOWAY: -- to alert the court. Everyone, except
3 Ms. Wade, said no, we do not. And then Ms. Wade -- so at that
4 point, that was the entirety of our notice, is the word I'll
5 use.

6 THE COURT: OK.

7 MR. SOLOWAY: And the specific statutes, we didn't get
8 into the granular details. We were not aware of.

9 THE COURT: OK.

10 MR. SOLOWAY: The sites that she gave to your Honor I
11 heard for the first time in the robing room. If we had, you
12 know, time to --

13 We have a lot to do.

14 THE COURT: Yes. Same here.

15 MR. SOLOWAY: I know, your Honor. I know. I know.
16 And that's the way it happened today.

17 We will try our best to address these things and to
18 have meaningful discussions with our client about what is going
19 on before we come into court, and we will try to avoid having
20 anything like that happen again. We'll do our best, and that's
21 all I think I can say.

22 THE COURT: While we were in the ex parte
23 discussion -- no, government, you're not getting any more
24 details of them -- I made mention of the type of argument I
25 thought this was.

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1 MR. SOLOWAY: Yes.

2 THE COURT: You heard me. Yes.

3 It is. It is.

4 MR. SOLOWAY: Yes, your Honor.

5 THE COURT: And that's not something, I'm not going to
6 have a trial about that.

7 So going forward, I hope there -- well, I hope there
8 will be no further requests for ex parte communications. I
9 doubt I'll indulge them. but I wanted you know to know, this
10 was what I feared it was, and I won't do it again.

11 MR. SOLOWAY: Yes, your Honor.

12 THE COURT: So I appreciate that you will talk to your
13 client and, perhaps, explain to her why these particular
14 theories are not going to be countenanced in this courtroom.

15 MR. SOLOWAY: Yes, your Honor.

16 THE COURT: All right. I thank you all very much.

17 We'll see everyone tomorrow at 8:45, unless there is
18 anything --

19 Mr. King, I was so close to getting out of here.

20 MR. KING: Sorry, your Honor. We'll be very brief.
21 One thing we wanted to put on the record today.

22 THE COURT: Everybody seems to put something on the
23 record today.

24 Sir, yes.

25 MR. KING: Yes, your Honor.

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Pescod - Direct

1 Yesterday during jury selection when we did portions
2 of the selection in the robing room, as opposed to at sidebar
3 with the white noise machine, the government just wanted to put
4 on the record that our view is that those were not akin to a
5 courtroom closure, that that was a mechanism your Honor used
6 essentially in lieu of a sidebar, but wasn't closed off to the
7 public.

8 And so the government just wanted to put its view of
9 what that mechanism was on the record, because there was some
10 discussion about what it was, and we just wanted to put on the
11 record our view that it was not a courtroom closure or akin to
12 a courtroom closure.

13 THE COURT: Fair enough. I'm not interested in having
14 Alcantara revisited years later.

15 I did also obtain from the parties their consent to
16 have the proceedings in the robing room so we could have
17 discussions without the white noise or the jurors.

18 so I appreciate you have put on the record the
19 government's perspective, sir.

20 Thank you.

21 MR. KING: Thank you, your Honor.

22 THE COURT: All right. Anything from the defense this
23 afternoon?

24 MR. SOLOWAY: Dave?

25 MR. STERN: No.

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Pescod - Direct

1 THE COURT: All right. Go forth, everyone.
2 Thank you very much. We'll do this again tomorrow.
3 Have a great day.
4 (Adjourned to December 6, 2023, at 8:45 a.m.)
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